



## MEMORANDUM

TO: Mayor and City Commissioners

FROM: Lula Butler - Director, Community Improvement

THROUGH: David Harden - City Manager

DATE: February 3, 2012

SUBJECT: **AGENDA ITEM 12.D. - REGULAR COMMISSION MEETING OF FEBRUARY 7, 2012**  
**ORDINANCE NO. 08-12**

### **ITEM BEFORE COMMISSION**

City Commission consideration of approving Ordinance No. 8-12, amending Chapter 117, "Landlord Permits", of the Code of Ordinances of the City of Delray Beach, by amending Section 117.01, "Permit Required", to clarify when a permit is required; amending Section 117.03, "Approval of Application", to provide additional requirements; amending Section 117.04, "Denial or Revocation of permit application; appeals", to clarify grounds for revocation; and amending Section 117.06, "Tenant/Occupant Eviction", to ensure notice and due process rights are followed or alternate housing is provided.

### **BACKGROUND**

City Commission directed staff to strengthen the permit approval and enforcement process of properties receiving permits under the Landlord Permit program. The changes proposed are designed to improve the quality of life for all residents. Permit applicants will be required to provide copies of all leases, subleases and/or agreements to occupy the building or unit and are responsible for providing updated copies of the same within 30 days of any changes.

Leased residential units will be limited to four (4) vehicles, for which residential parking stickers must be obtained from the City. Additional parking stickers may be issued when certain conditions are met and are documented.

Additionally, applicants will be required to follow Chapter 83, Florida Statutes governing evictions. Residential units within the City's Residential Zoning District that are otherwise not required to follow the State Statute, must provide proof of availability of an alternative temporary dwelling unit in the event of an eviction, in compliance with Section 117.06 of the Code of Ordinance. Further, the amendments under this Ordinance clarify reasons a Landlord permit may be revoked.

### **RECOMMENDATION**

Staff recommends approval of Ordinance No. 8-12 upon first reading.

ORDINANCE NO. 8-12

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 117, "LANDLORD PERMITS", OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, BY AMENDING SECTION 117.01, "PERMIT REQUIRED", TO CLARIFY WHEN A PERMIT IS REQUIRED; AMENDING SECTION 117.03, "APPROVAL OF APPLICATION", TO PROVIDE ADDITIONAL REQUIREMENTS; AMENDING SECTION 117.04, "DENIAL OR REVOCATION OF PERMIT APPLICATION; APPEALS", TO CLARIFY GROUNDS FOR REVOCATION; AND AMENDING SECTION 117.06, "TENANT/OCCUPANT EVICTION", TO ENSURE NOTICE AND DUE PROCESS RIGHTS ARE FOLLOWED OR ALTERNATE HOUSING IS PROVIDED; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Delray Beach, Florida, has determined that enforcement of various City ordinances can be improved by greater involvement by the owners of property; and

WHEREAS, the City Commission of the City of Delray Beach, Florida, desires to improve the quality of life for its residents; and

WHEREAS, the City Commission of the City of Delray Beach, Florida, has developed a point system whereby landlord permits may be revoked for repeated instances of warning, temporary compliance and repeated violation of nuisance ordinances in order to more effectively address violations that affect the rights of residents adjacent to residential rental property within the City of Delray Beach; and

WHEREAS, the City Commission of the City of Delray Beach, Florida, seeks to update and revise the permit process to reflect the ongoing development of public policy as it regards to interests of the residents of the City, including congestion to street parking, in residential neighborhoods, and other issues of public health and safety concern; and

WHEREAS, the City Commission of the City of Delray Beach, Florida, desires to ensure that proper eviction proceedings are followed by all landlords within the City of Delray Beach in accordance with Chapter 83, *Florida Statutes*, or other methods of due process afforded to reduce homelessness and crime in the City of Delray Beach; and

WHEREAS, the courts have stated that houses for recovering addicts are subject to Residential Landlord Tenant Act requirements pertaining to evictions. *See, Burke v. Oxford House of Oregon Chapter V*, 341 Or. 82, 137 P.3d 1278 (Or. 2006); and

WHEREAS, hotels/motels are licensed by the Department of Business and Professional Regulation

and are not regulated by landlord/tenant laws; and

WHEREAS, all residential tenancies that are located in residential zoning districts and are not classified as hotel/motel uses shall be regulated by this section regardless of the length of the lease or occupant contract unless such tenancies are licensed as Group Homes or Community Residential Homes per § 419.001, *Fla. Stat.*; and

WHEREAS, the Census Data collected by the U.S. Census Bureau in 2010 provides that the average family size is 2.87 people; and

WHEREAS, the United States District Court for the Southern District of Florida held in *Jeffrey O. v. City of Boca Raton*, 511 F.Supp. 2d 1339 (S.D. Fla. 2007), that there is, “nothing wrong with the number three that the city has chosen.”

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That Chapter 117, “Landlord Permits”, Section 117.01, “Permit Required”, shall be amended to read as follows:

**Sec. 117.01. PERMIT REQUIRED.**

(A) No person, company or other entity may offer to or lease, sublease, rent, license, sublicense or have any other arrangement allowing occupancy of any residential units unless a landlord permit is obtained or in existence for the units. All oral rental arrangements shall be included within the scope of this Section, but the operation of a hotel shall not be included in this Section (any building which fits the definition of hotel but also fits the definition of another use which requires a landlord permit shall be interpreted to require a landlord permit), nor shall any facility licensed by the State as a Group Home or Community Residential Home or Assisted Living Facility. Whenever Chapter 117 refers to “lease(s)”, “leased”, “rent(s)”, or “rented”, it shall hereinafter include leases, subleases, rentals, licenses, sublicenses and all other arrangements for the occupancy of property.

(B) A separate permit shall be required for each leased unit. However, where a building contains a number of leased units under the same owner, or where a number of different owners in one building authorize the same person or company to act as their agent for the purposes of applying for a permit, a single permit may be obtained for all qualifying units within a single building which are under the same owner or agent, provided that the permit fee is paid for each individual unit. Any such permit issued by the City for residential unit(s) being leased for the first time shall be conditioned upon the applicant providing the City's Director of Community Improvement or his/her designee a current copy of all leases, subleases, and/or agreements to occupy the building or unit(s) therein and providing updated copies of all leases, subleases, and/or agreements to occupy the building or unit(s) therein within thirty (30) days of any changes. Any such permit being renewed by the City shall be conditioned upon the applicant providing to the City's Director of Community Improvement or his/her designee

all required information with the application. Nothing in this Section shall require a permit for any unit enrolled in Federal housing programs or under Federal [Department of] Housing and Urban Development general supervision.

(C) Leased residential units seeking such permits shall be limited to four (4) vehicles, for which residential parking stickers may be obtained, provided that, upon good cause shown, specifically including availability of garage space, additional parking stickers may be issued by the Community Improvement Director, if the additional stickers will not affect the quality of the neighborhoods.

Section 2. That Chapter 117, "Landlord Permits", Section 117.03, "Approval of Application", shall be amended to read as follows:

**Sec. 117.03 APPROVAL OF APPLICATION.**

(A) The Community Improvement Director or his/her designee, shall grant approval for the lease of units within the City for residential purposes upon the filing of an application on forms designated by the City and a determination:

- (1) That the applicant has an interest in the property or is the agent or acting under the permission of one with a sufficient interest in the property to obtain a landlord permit;
- (2) That the units comply with the requirements of the Housing Code as set forth in Section 7.4.1 of the Land Development Regulations of the City of Delray Beach with regard to those facilities necessary to make the rental unit habitable specifically including, but not limited to, numbers of bedrooms and bathrooms required for the number of persons who will occupy the dwelling;
- (3) That the rental of the units is in compliance with applicable zoning code regulations as enumerated in Chapter 4 of the Land Development Regulations;
- (4) That no more than three (3) unrelated persons shall reside in any unit as further defined in the definition of "family" as provided in Appendix "A" of the Land Development Regulations;
- (5) That an annual permit fee in accordance with Section 117.02 is paid;
- (6) That the applicant and applicant's property are not in violation of this article;
- (7) That proof of payment of state sales tax is provided on an annual basis at renewal for all leases that are less than six (6) months in duration in accordance with Section 212.03, *Fla. Stat.*;

~~(8) That a local business tax receipt has been obtained for all leases that are rented more often than six (6) times in any one (1) year; and~~

(9) (8) That the applicant has certified that they will provide each tenant with a copy of:

- a. Chapter 83, *Florida Statutes*, Part II, entitled "Residential Tenancies";
- b. Chapter 117 of the Code of Ordinances, entitled "Landlord Permits"; and
- c. A pamphlet provided by the City containing guidelines for rentals.

~~(9) If the applicant is not otherwise required to follow Chapter 83, *Florida Statutes*, then the applicant shall provide proof of availability of an alternative temporary dwelling unit in the event of an eviction, in compliance with Section 117.06 of the Code of Ordinances of the City of Delray Beach; and~~

~~(10) All tenants shall be in compliance with Chapter 136 of the Code of Ordinances of the City of Delray Beach regarding Sexual Offenders and Sexual Predators.~~

~~(B) Any permit shall be conditioned upon receipt of the documents required by Section 117.01(B).~~

Section 3. That Chapter 117, "Landlord Permits", Section 117.04, "Appeals", shall be amended to read as follows:

**Sec. 117.04 DENIAL OR REVOCATION OF PERMIT APPLICATION; APPEALS.**

(A) A Permit application may be denied for the following reasons:

- (1) The application for permit is not fully completed and executed, with the Landlord Permit Affidavit;
- (2) The applicant has not tendered the required application fee with the application;
- (3) The application for permit contains a material falsehood or misrepresentation;
- (4) The use is not allowed in the zoning district;
- (5) The applicant had their landlord permit revoked within the last twelve (12) months as set forth in Section 117.04(B) below.

(B) Permits may be revoked for the following reasons:

- (1) Violations of the City's Ordinances or state laws where the violation takes place at a unit regulated by ~~this Section~~ Chapter 117 of the Code of Ordinances of the City of Delray Beach shall be grounds for applicable fines and the commencement of permit revocation proceedings as follows:
  - (a) For each civil citation for a violation of a City ordinance, one (1) point will be assessed on the landlord permit for that individual unit.
  - (b) After two (2) points are assessed on a landlord permit for an individual unit, the City Manager or his/her designee will send a written warning to the permittee or agent. The warning will specify which ordinance or ordinances have been violated and will state that further citations or violations could lead to a revocation of the permit.
  - (c) Accumulation of three (3) or more points on a landlord permit for an individual unit during a 12-month period from the date of the first citation shall constitute a violation of Chapter 117 of the Code of Ordinances of the City of Delray Beach. ~~this section and the certifications of the applicant described above, subjecting the permittee to revocation of the permit for the individual unit.~~
- ~~(2) The representations made in the permit application are no longer true and correct.~~
- ~~(3) The lease, sublease, and/or agreement to occupy the dwelling or unit(s) therein is not updated within thirty (30) days of any changes.~~

(C) Appeals of a denial or revocation of a landlord permit shall be made to the Permit Review Committee which shall consist of the City Manager, the Community Improvement Director and the Planning and Zoning Director or their respective designees. The City Attorney's Office shall act as counsel to the Permit Review Committee. Requests for appeal must be made in writing and received by the Community Improvement Director within thirty (30) days of formal notice of denial or revocation with the date of the notice of denial being the first day. Decisions of the Permit Review Committee may be appealed to the City Commission, whose decision shall be final subject to any appeal of such decision to the Circuit Court of Palm Beach County.

Section 4. That Chapter 117, "Landlord Permits", Section 117.06, "Tenant Eviction", of the Code of Ordinances of the City of Delray Beach, Florida, shall be enacted to read as follows:

Sec. 117.06. TENANT/OCCUPANT EVICTION.

(A) All applicants granted a landlord permit to lease residential units within the City's Residential Zoning Districts must provide notice prior to evicting a tenant or occupant in accordance with Chapter 83 of the *Florida Statutes*.

(B) All residential uses requiring a landlord permit that are not otherwise required to follow Chapter 83, *Florida Statutes*, shall provide either forty-eight (48) hours notice of eviction in writing to the tenant/occupant or provide an alternative temporary dwelling unit for the tenant/occupant for at least forty-eight (48) hours to avoid increased homelessness and crime and to ensure that tenant/occupant's due process rights are not violated.

(C) All applicants granted a landlord permit to lease residential units within the City's Residential Zoning Districts that are otherwise not required to follow Chapter 83, *Florida Statutes*, must provide proof of available alternative temporary dwelling unit(s) to the Community Improvement Director when submitting an application for landlord permit under Section 117.03 of the Code of Ordinances of the City of Delray Beach.

Section 5. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 6. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 7. That this ordinance shall become effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the \_\_\_\_ day of \_\_\_\_\_, 2012.

ATTEST

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
City Clerk

First Reading\_\_\_\_\_

Second Reading\_\_\_\_\_

# CITY OF DELRAY BEACH



Community Improvement  
100 NW 1<sup>st</sup> Avenue  
Delray Beach, Fl 33444

## INSTRUCTIONS FOR APPLICATION AND AFFIDAVIT FOR LANDLORD PERMIT

### RESIDENTIAL PROPERTY

(561) 243-7243

~~1.~~ Applicants are hereby advised that any leases, subleases, and/or agreements to occupy the building for which a permit is sought should provide that such agreement does not become effective until receipt of the approval by the City's Director of Community Improvement or his/her designee of this application.

~~1.~~ 2. Please complete all applicable information on the Application for Landlord Permit and the Landlord Permit Affidavit.

**Note:** Please complete the Permit Application for each rental unit. Attach additional sheets as necessary. A Landlord Permit is **NOT** required for a hotel, for any unit enrolled in a federal housing program, or under Housing and Urban Development general supervision.

~~2.~~ 3. **A Landlord Permit Affidavit must be notarized and submitted with each application.** A permit cannot be issued without the affidavit. Be sure to read the information on the reverse side of the affidavit. (A Notary Public is available in the Code Enforcement Division.)

~~3.~~ 4. Landlord Permits are issued for the 12-month period of **November 1**, through **October 31**, at a fee of **\$60.00 per rental unit**. Each separate lease, sublease, and/or agreement constitutes a rental unit. Please do not send cash. Checks must be made payable to the City of Delray Beach. The fee will not be prorated. **Landlord Permits not renewed within 60 days of the annual renewal date will be subject to triple permit fees.**

~~4.~~ 5. Please return your completed application, notarized affidavit, supplemental sheets (if any), and payment to Landlord Permit Section, Code Enforcement Division, City of Delray Beach, 100 NW 1st Avenue, Delray Beach, Florida 33444.

~~6.~~ If approved, applicants shall be required to provide a copy of the lease, sublease, and/or agreement for each rental unit at the time of the application and/or renewal.

If you have any questions or need further information, please call the Code Enforcement Division at (561) 243-7243, 8:00 AM to 5:00 PM, Monday through Friday.





Landlord Permit # \_\_\_\_\_

## CITY OF DELRAY BEACH APPLICATION FOR LANDLORD PERMIT

IF YOU HAVE MORE THAN ONE RENTAL UNIT AND IF YOU RECEIVE A SEPARATE PROPERTY TAX BILL FOR EACH UNIT, YOU **MUST** COMPLETE A SEPARATE APPLICATION FOR EACH UNIT.

PLEASE PRINT

Property Control No. \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_

Rental Address \_\_\_\_\_

Property Owner \_\_\_\_\_ Phone \_\_\_\_\_

Mailing Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Type of Building \_\_\_\_\_ Single Family

Are you under the HUD Program?

\_\_\_\_\_ Duplex

Yes \_\_\_\_\_ No \_\_\_\_\_

\_\_\_\_\_ Multi Family

TOTAL NUMBER OF UNITS OR SEPARATE LEASES IN BUILDING \_\_\_\_\_

NUMBER OF RENTAL UNITS FOR THIS PERMIT \_\_\_\_\_

### PLEASE COMPLETE THIS RENTAL INFORMATION:

Unit No. _____	No. of Bedrooms _____	No. of <del>Bed</del> Bathrooms _____	Total No. of Occupants _____
Unit No. _____	No. of Bedrooms _____	No. of <del>Bed</del> Bathrooms _____	Total No. of Occupants _____
Unit No. _____	No. of Bedrooms _____	No. of <del>Bed</del> Bathrooms _____	Total No. of Occupants _____
Unit No. _____	No. of Bedrooms _____	No. of <del>Bed</del> Bathrooms _____	Total No. of Occupants _____
Unit No. _____	No. of Bedrooms _____	No. of <del>Bed</del> Bathrooms _____	Total No. of Occupants _____

A notarized Landlord Permit Affidavit (attached) **MUST** accompany this application before a permit will be issued.

Signature of Owner or Authorized Agent \_\_\_\_\_

**DO NOT WRITE BELOW THIS LINE**

DATE: \_\_\_\_\_

AMOUNT PAID: \_\_\_\_\_

## SUPPLEMENTAL SHEET FOR APPLICATION FOR LANDLORD PERMIT

**DESIGNATE UNIT NUMBERS BELOW:**

[illegible]



## LANDLORD PERMIT AFFIDAVIT RESIDENTIAL PROPERTY

I, \_\_\_\_\_, being duly sworn affirm that I am authorized to apply for a landlord permit for the following residential unit(s) located at \_\_\_\_\_ because:

- ☐ I am the actual owner of the unit(s) OR  
☐ I have the legal authority to represent the actual owner of the unit(s). [Submit a copy of your authorization from the property owner.]

I have read and understand the requirements of Sections ~~[302.1, 302.3, 302.5.1, 302.6, 302.7, 302.9 and 305.4]~~ of the Delray Beach Code of Ordinances and Land Development Regulations Standard Housing Code, ] ~~as printed on the reverse side of this document,~~ and affirm that the above described residential unit(s) complies with those requirements. I further affirm that the above residential unit(s) is in sound structural condition, has electrical service and that all electrical devices are properly installed and in good working order. I also affirm that every habitable room has at least one window or skylight facing directly to the outdoors and that all windows are capable of being easily opened and secured in position by existing window hardware and have screens (if there is no central a/c) and unbroken glazing.

### New or Renewing Landlord Permit Application

☐ I am applying for a Landlord Permit for the above described residential unit(s) for the first time. I am enclosing a copy of the current lease for each of the above described residential unit(s) with this Affidavit.

☐ I am applying to renew an existing Landlord Permit for the above described residential unit(s). I am enclosing a copy of the current lease for each above described residential unit(s) with this Affidavit.

### Compliance with Chapter 117, "Landlord Permits"

I certify that I am in compliance with all applicable requirements of Chapter 117, Landlord Permits, including specifically the following:

1. I will provide each tenant with a copy of:
  - a. Chapter 83, Florida Statutes, Part II, entitled "Residential Tenancies";
  - b. Chapter 117 of the Code of Ordinances, entitled "Landlord Permits"; and
  - c. A pamphlet provided by the City containing guidelines for rentals.

2. I ☐ am ☐ am not [you must check one of the boxes] otherwise required to follow Chapter 83, *Florida Statutes*, regarding evictions.

For those applicants that are not otherwise required to follow Chapter 83, *Florida Statutes*—I am providing with my Landlord Permit Affidavit the following proof of availability of an alternative temporary dwelling unit in the event of an eviction, in compliance with Section 117.06 of the Code of Ordinances of the City of Delray Beach:

[describe type of proof and attach proof to Affidavit].

3. All of my tenants shall be in compliance with Chapter 136 of the Code of Ordinances of the City of Delray Beach regarding Sexual Offenders and Sexual Predators.

I will inform the City of Delray Beach Code Enforcement Division of any changes from the original Application for Landlord Permit and supplemental sheets (if utilized) concerning ownership, owner's mailing address for permits and renewals, number of unit(s), number of units under Federal programs or HUD supervision, number of bedrooms or number of occupants in each unit within thirty (30) days of each such change. I affirm that the individual unit(s) described above will only be rented to occupants whose relationship does not violate the City's definition of family, ~~which definition is printed on the reverse side of the Instructions for Landlord Permit Application~~ and which I acknowledge as reading and understanding.

Owner or Authorized Agent: \_\_\_\_\_  
(Signature)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

by \_\_\_\_\_ who is personally known to me or who has produced  
(NAME)

\_\_\_\_\_ as identification and who did take an oath.  
(TYPE OF ID)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Type, Print, or Stamp Name

\_\_\_\_\_  
Serial Number

## FAMILY DEFINITION:

“Family” shall mean two (2) or more persons living together and interrelated by bonds of consanguinity, marriage or legal adoption, and/or a group of persons not more than three (3) in number who are not so interrelated, occupying the whole or part of a dwelling as a separate housekeeping unit with a single set of culinary facilities. Any person under the age of 18 years whose legal custody has been awarded to the State Department of Health and Rehabilitative Services or to a child-placing agency licensed by the Department, or who is otherwise considered to be a foster child under the laws of the state, and who is placed in foster care with a family, shall be deemed to be related to and a member of the family for the purposes of this definition. Occupancies in excess of the number allowed herein shall have twelve (12) months from the date of the enactment of this definition or the termination of the current lease agreement to come into compliance, whichever occurs first.

~~You are responsible for knowing all applicable laws. Sections of the Standard Housing Code are provided here for reference only and are not intended to be exhaustive.~~

### ~~302.1 Sanitary Facilities~~

~~Every dwelling unit shall contain not less than a kitchen sink, lavatory, tub or shower and a water closet all in good working condition and properly connected to an approved water and sewer system. Every plumbing fixture and water and waste pipe shall be properly installed and maintained in good sanitary working condition free from defects, leaks and obstructions.~~

### ~~302.3 Hot and Cold Water Supply~~

~~Every dwelling unit shall have an adequate supply of both cold and hot water connected to the kitchen sink, lavatory, tub or shower. All water shall be supplied through an approved distribution system connected to a potable water supply.~~

### ~~302.5.1 Heating Facilities~~

~~Every dwelling unit shall have heating facilities which are properly installed, are maintained in safe and good working conditions and are capable of safely and adequately heating all habitable rooms and bathrooms.~~

### ~~302.6 Kitchen Facilities~~

~~Every dwelling unit shall contain a kitchen equipped with the following minimum facilities:~~

- ~~1. Food preparation surfaces impervious to water and free of defects which could trap food or liquid.~~
- ~~2. Shelving, cabinets or drawers for the storage of food, cooking and eating utensils, all of which shall be maintained in good repair.~~
- ~~3. Freestanding or permanently installed cook stove. Portable electric cooking equipment shall not fulfill this requirement. Portable cooking equipment employing flame shall be prohibited.~~
- ~~4. Mechanical refrigeration equipment for the storage of perishable foodstuffs. EXCEPTION: Nothing herein shall preclude a written agreement between an owner and tenant that the tenant will furnish mechanical refrigeration equipment and/or a cook stove as required in this section. It shall be an affirmative defense available to an owner charged with a violation of this section if such an agreement exists.~~

### ~~302.7 Garbage Disposal Facilities~~

~~Every dwelling unit shall have adequate garbage disposal facilities or garbage storage containers, or a type and location approved by the applicable governing body.~~

### ~~302.9 Smoke Detector Systems~~

~~Every dwelling unit shall be provided with an approved listed smoke detector, installed in accordance with the manufacturer's recommendations and listing. When activated, the detector shall provide an audible alarm. The detector shall be tested in accordance with and meet the requirements of UL 217 (1989), Single and Multiple Station Smoke Detectors.~~

~~Every dwelling unit shall have safe, unobstructed means of egress with minimum ceiling height of 7 ft (2134 mm) leading to a safe and open space at ground level. Stairs shall have a minimum head room of 6 ft 8 inches (2032 mm).~~

### Sec. 117.03 APPROVAL OF APPLICATION

A. The Community Improvement Director or the assigned designee, shall grant a professional approval landlord permit for the lease, sublease, and/or agreement for each rental of units within the City for residential purposes upon the filing of an application on forms designated by the City and a determination that;

- 1) ~~That~~ the applicant has an interest in the property or is the agent or acting under the permission of one with a sufficient interest in the property to obtain a landlord permit;
- 2) ~~That~~ the units comply with the requirements of the Housing Code as set forth in Section 7.4.1 of the Land Development Regulations of the City of Delray Beach with regard to those facilities necessary to make the rental unit habitable specifically including, but not limited to, numbers of bedrooms and bathrooms required for the number of persons who will occupy the dwelling;
- 3) ~~That~~ the of the units is in compliance with applicable zoning code regulations as enumerated in Chapter 4 of the Land Development Regulations;
- 4) ~~That~~ no more than three unrelated persons shall reside in any unit as further defined in the definition of “family” as provided in Appendix “A” of the Land Development Regulations;
- 5) ~~That~~ an annual permit fee in accordance with Section 117.02 is paid;
- 6) ~~That~~ the applicant and applicant’s property are not in violation of this article;

#### **New Requirements:**

- 7) ~~That~~ proof of payment of state sales tax is provided on a annual basis at renewal for all leases that are less than six (6) months in duration in accordance with Section 212.03, Fla. Stat.;
- 8) ~~That a local business tax receipt has been obtained for all leases that are rented more often than six (6) times in any one (1) year;~~
- 9) ~~That~~ the applicant has certified that they will provide each tenant with a copy of:
  - a. Chapter 83, Florida Statutes, Part II, entitled “Residential Tenancies”;
  - b. Chapter 117 of the Code of Ordinances, entitled “Landlord Permits”; and
  - c. A pamphlet provided by the City containing guidelines for rentals.
- 10) if the applicant is not otherwise required to follow Chapter 83 or other regulations and laws concerning eviction proceedings, the applicant provides proof of availability of an alternative temporary dwelling unit in the event of an eviction, in compliance with Section 117.06; and
- 11) the applicant has certified that their tenants will be in compliance with Chapter 136, Code of Ordinances and all other applicable regulations and laws concerning Sexual Offenders and Sexual Predators.

~~Section 3. That Chapter 117, "Landlord Permits", Section 117.04, "Appeals", shall be to read as follows:~~

**Sec. 117.04 DENIAL OR REVOCATION OF PERMIT APPLICATION: APPEALS**

A. ~~A~~ Permit application may be denied for the following reasons:

- 1) The application for permit is not fully completed and executed, with the Landlord Permit Affidavit;
- 2) The applicant has not tendered the required application fee with the application;
- 3) The application for permit contains a material falsehood or misrepresentation;
- 4) The use is not allowed in the zoning district;
- 5) The applicant had their landlord permit revoked within the last twelve (12) months as set forth in Section 117.04(B) below.

B. Permits may be revoked for the following reasons:

- 1) Violations of the City's Ordinances or state laws where the violation takes place at a unit regulated by ~~this Section~~ Chapter 117 of the Code of Ordinances of the City of Delray Beach shall be grounds for applicable fines and the commencement of permit revocation proceedings as follows:
  - a. For each civil citation for a violation of a City ordinance, one (1) point will be assessed on the landlord permit for that individual unit.
  - b. After two (2) points are assessed on a landlord permit for an individual unit the City Manager or his/her designee will send a written warning to the permittee or agent. The warning will specify which ordinance of ordinances have been violated and will state that further citations or violations could lead to a revocation of the permit.
  - ~~c. Accumulation of three (3) or more points on a landlord permit for an individual unit during a 12-month period from the date of the first citation shall constitute a violation of Chapter 117 of the Code of Ordinances of the City of Delray Beach. this section and the certifications of the applicant described above, subjecting the permittee to revocation of the permit for the individual unit.~~
- 2) The representations made in the application are no longer true and correct.
- 3) The lease, sublease, and/or agreement to occupy the building or unit(s) therein is not updated within thirty (30) days of any changes.



ORDINANCE NO. 03-12

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING SECTION 4.3.3, "SPECIFIC REQUIREMENTS FOR SPECIFIC USES", BY AMENDING SUBSECTION 4.3.3(ZZZ), "TRANSIENT RESIDENTIAL USE", IN ORDER TO CLARIFY PROHIBITIONS, EXEMPTIONS/ EXCEPTIONS, WAIVERS, AND PENALTIES FOR SAME; AMENDING APPENDIX "A", "DEFINITIONS", IN ORDER TO AMEND THE DEFINITION OF "TRANSIENT RESIDENTIAL USE"; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission hereby finds and declares that the leasing, renting, licensing, subleasing or otherwise allowing in any manner or form the use of single-family residential dwelling units for periods of less than twelve (12) months with a turnover in occupancy more often than three (3) times per year to any person, entity or family, is a non-residential activity and is not considered an accessory use customarily accessory and incidental and subordinate to the primary intended purpose of dwellings, *See, Schuurz v. City of Treasure Island*, 21 Fla.L.Weekly Fed. C11541 (11th Cir. 2008); and

WHEREAS, the Census Data collected by the U.S. Census Bureau in 2010 provides that the average family size is 2.87 people; and

WHEREAS, transient residential uses often maximize occupancy causing increased pressure on infrastructure, including: garbage, sewer, water, roadways, and utilities; code enforcement, law enforcement, fire protection and inspection services; and

WHEREAS, transient residential uses can result in increased noise and traffic in single-family residential communities; and

WHEREAS, unless regulations are placed on the amount and location of transient uses, such uses could overwhelm the non-transient related single-family residential community making the City of Delray Beach a less attractive place to reside; and

WHEREAS, transient residential uses can be incompatible with permanent and seasonal residential uses if not properly planned, controlled and regulated; and

WHEREAS, the rapid turnover in occupancy associated with transient residential uses can be a disruptive influence on the peaceful use and enjoyment of single family residential areas; and

WHEREAS, reserving land for single family residences preserves the character of neighborhoods, securing "zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people." *See, City of Edmonds v. Oxford House*, 514 U.S. 725, 733 115 S.Ct. 1776, 131 L.Ed. 2d 801 (1995); and

WHEREAS, Congress intended the FHA to "prohibit the use of zoning regulations to limit the ability of the handicapped to live in the residence of their choice in the community; however, the FHA does not pre-empt or abolish a municipality's power to regulate land use and pass zoning laws." *See, Jeffrey O. v. City of Boca Raton*, 511 F. Supp. 2d 1339 (S.D. Fla. 2007); and

WHEREAS, transient residential uses can displace permanent single family residential dwellings and thus reduce the number of permanent residents in the City and cause a reduction in state revenue sharing funds necessary to support the services that influence the quality of life for residents, commercial interests, and visitors to the City of Delray Beach; and

WHEREAS, uncontrolled and unregulated transient residential uses is found to have a negative impact on the City of Delray Beach's economy, property values, law enforcement, traffic, safety, and the general health, safety, and welfare of the citizens of Delray Beach; and

WHEREAS, the State of Florida has recognized that leases, rentals, licenses, subleases, and assignments or otherwise allowing in any manner the use of a residential dwelling unit for under twelve (12) months in duration is a transient use and is therefore taxed by the State of Florida at a rate of six (6) percent of the total rental amount charged; and

WHEREAS, the Delray Beach Planning and Zoning Board has reviewed this ordinance and a duly noticed public hearing was held before the Planning and Zoning Board on December 19, 2011, and said Board has recommended adoption of the changes to the City's Land Development Regulations regarding the regulation of transient rental units by a vote of 6 to 0 ; and

WHEREAS, the City Commission and the Planning and Zoning Board both find that the ordinance is consistent with the City's Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That the Land Development Regulations of the City of Delray Beach, Florida, Section 4.3.3, "Specific Requirements for Specific Uses", Subsection 4.3.3(ZZZ), "Transient Residential Uses", shall hereby be amended to read as follows:

(ZZZ) TRANSIENT RESIDENTIAL USE The entire dwelling unit or any part thereof, which is located in Single Family or Planned Residential Development Zoning Districts and is operated or used in such a way that any part of the dwelling unit turns over occupancy more often than three (3) times in any one (1) year shall be presumed to be a Transient Residential Use and therefore prohibited. An entire dwelling unit or any part thereof, which is located in Medium Density Residential (RM) Zoning Districts and is operated or used in such a way that any part of the entire dwelling unit turns over occupancy more often than six (6) times in any one (1) year shall be presumed to be a Transient Residential Use and therefore prohibited.

(1) **Exceptions/Exemptions:**

- (a) Existing transient residential uses with a turnover more often than three (3) times per year but not exceeding six (6) times per year in single-family and planned residential development zoning districts may continue until twelve (12) months after the effective date of this ordinance.
- (b) The leasing, renting, licensing, subleasing or otherwise allowing in any manner or form the use of a single-family dwelling unit for Community Residential and Group Homes which are licensed by the state are exempt.
- (c) The real property owners of the dwelling unit and their family are exempt regardless of how much time the owners and family spend at the dwelling unit on a yearly basis.

(2) **Waiver for Undue Economic Hardship:** In all instances where there is a claim of undue economic hardship, the property owner may be granted a waiver from Section 4.3.3(ZZZ) after submission of waiver request to the City's Community Improvement Director or his/her designee including the following documentation:

- (a) The amount paid for the property, the date of purchase, and the party from whom purchased;

- (b) The assessed value of the land and improvements thereon, according to the two most recent assessments;
- (c) Real estate taxes for the previous two years;
- (d) Annual debt service or mortgage payments, if any, for the previous two years;
- (e) All appraisals, if any, obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property;
- (f) Any listing of the property for sale or rent, price asked, and offers received, if any;
- (g) The annual gross income from the property for the previous two years, if any;
- (h) The annual cash flow, if any, for the previous two years;
- (i) An applicant may submit and the Community Improvement Director or his/her designee may require that an applicant furnish additional information relevant to the determination of any alleged undue economic hardship; and
- (j) In the event that any of the required information is not reasonably available to the property owner and cannot be obtained by the property owner, the property owner shall file statement of the information which cannot be obtained and the reasons why such information cannot be reasonably obtained. Where such unobtainable information concerns required financial information, the property owner will submit a statement describing estimates which will be as accurate as are feasible.

(3) **Reasonable Accommodation:** Reasonable Accommodations from this section may be obtained pursuant to LDR Section 2.4.7(G).

(4) **Penalties for Violations:** The City adopts all enforcement methods, which include, but are not limited to, the issuance of a citation, summons, notice to appear in county court, arrest for violation of municipal ordinances, civil citations, injunction or any other enforcement method authorized by law including penalties as set forth in Section 10.99 of the City's Code of Ordinances. Any property owner that leases, rents, licenses, subleases, or otherwise allows in any manner or form the use of an entire dwelling unit within a single-family or planned residential development zoning district for a period of less than twelve (12) months with a turnover in occupancy of any part of the dwelling unit more often than three (3) times in any one (1) year as well as those entire dwelling units that are located within Medium Density Residential (RM) Zoning Districts with a turnover in occupancy of any part of the dwelling unit more often than six (6) times in any one (1) year shall be in violation of this section.

(5) **Severability:**

- (a) **Generally.** If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of Section 4.3.3(ZZZ) is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect the remainder of Section 4.3.3(ZZZ), "Transient Residential Uses".
- (b) If the entire Section 4.3.3(ZZZ) is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the earlier version of this section

adopted by the City Commission on July 7, 2009 as Ordinance 29-09 shall be substituted herein and shall be deemed to be in full force and effect.

Section 2. That Appendix "A", "Definitions", of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

TRANSIENT RESIDENTIAL USE shall mean the entire dwelling unit or any part thereof, which is located in Single Family or Planned Residential Development Zoning Districts and is operated or used in such a way that any part of the dwelling unit turns over occupancy more often than three (3) times in any one (1) year and the entire dwelling unit or any part thereof, which is located in Medium Density Residential (RM) Zoning Districts and is operated or used in such a way that any part thereof turns over occupancy more often than six (6) times in any one (1) year.

Section 3. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 4. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 5. That this ordinance shall become effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the \_\_\_\_ day of \_\_\_\_\_, 2012.

**ATTEST**

\_\_\_\_\_  
**MAYOR**

\_\_\_\_\_  
City Clerk

First Reading\_\_\_\_\_

Second Reading\_\_\_\_\_