

MEMORANDUM

Agenda Item No. 4(C)

TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: May 2, 2017

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Ordinance relating to regulation of vacation rentals; creating section 33-28 of the Code; requiring a certificate of use and establishing zoning regulations for vacation rentals in the unincorporated area; providing requirements for issuance of certificate of use and renewal; providing vacation rental standards and duties of peer-to-peer or platform entities and responsible parties; requiring a bond under certain circumstances; requiring vacation rentals to comply with certain existing code provisions and imposing certain additional code requirements including requirements related to maximum occupancy, signs, noise, parking and pets; prohibiting a sexual predator or offender from occupying a vacation rental under certain circumstances; prohibiting a person from allowing a sexual predator or offender to occupy a vacation rental under certain circumstances; amending section 8CC; providing for enforcement by civil penalties

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Sally A. Heyman.



Abigail Price-Williams *for*
County Attorney

APW/cp



MEMORANDUM

(Revised)

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and Members, Board of County Commissioners

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Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 4(C)
5-2-17

ORDINANCE NO. _____

ORDINANCE RELATING TO REGULATION OF VACATION RENTALS; CREATING SECTION 33-28 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; REQUIRING A CERTIFICATE OF USE AND ESTABLISHING ZONING REGULATIONS FOR VACATION RENTALS IN THE UNINCORPORATED AREA; PROVIDING REQUIREMENTS FOR ISSUANCE OF CERTIFICATE OF USE AND RENEWAL; PROVIDING VACATION RENTAL STANDARDS AND DUTIES OF PEER-TO-PEER OR PLATFORM ENTITIES AND RESPONSIBLE PARTIES; REQUIRING A BOND UNDER CERTAIN CIRCUMSTANCES; REQUIRING VACATION RENTALS TO COMPLY WITH CERTAIN EXISTING CODE PROVISIONS AND IMPOSING CERTAIN ADDITIONAL CODE REQUIREMENTS INCLUDING REQUIREMENTS RELATED TO MAXIMUM OCCUPANCY, SIGNS, NOISE, PARKING AND PETS; PROHIBITING A SEXUAL PREDATOR OR OFFENDER FROM OCCUPYING A VACATION RENTAL UNDER CERTAIN CIRCUMSTANCES; PROHIBITING A PERSON FROM ALLOWING A SEXUAL PREDATOR OR OFFENDER TO OCCUPY A VACATION RENTAL UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 8CC; PROVIDING FOR ENFORCEMENT BY CIVIL PENALTIES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, Chapter 509, Florida Statutes, establishes a regulatory framework for lodging establishments, including vacation rentals and transient public lodging establishments; and

WHEREAS, Chapter 509 defines vacation rentals as “transient public lodging establishments” that consist of “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 one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests”; and

WHEREAS, despite the name, vacation rentals are not rented solely by vacationers, but may be used by travelers who find themselves in a particular locale for a variety of reasons and who wish to stay in a short-term residential rental; and

WHEREAS, vacation rentals must be registered and licensed with the Florida Department of Business Regulation in order to operate within the state; and

WHEREAS, although Section 509.032, Florida Statutes, restricts local governments from enacting regulations after June 1, 2011 that prohibit vacation rentals or that regulate the duration or frequency of such rentals, the statute also provides that local governments may continue to enforce regulations that were in existence as of June 1, 2011, and local governments may also enact new regulations on vacation rentals that do not pertain to duration and frequency; and

WHEREAS, Policy LU-4C of the County's Comprehensive Development Master Plan ("CDMP") provides, "residential neighborhoods shall be protected from intrusion by uses that would disrupt or degrade the health, safety, tranquility, character, and overall welfare of the neighborhood by creating such impacts as excessive density, noise, light, glare, odor, vibration, dust or traffic"; and

WHEREAS, the CDMP also provides that, with limited exceptions, commercial uses are prohibited in areas designated as Residential Communities, which include single-family and multi-family areas, and that hotels, motels, and bed and breakfast establishments shall not be approved in the Estate or Low Density residential categories; and

WHEREAS, these regulations in the CDMP have been in effect since long before June 1, 2011; and

WHEREAS, if unregulated, vacation rentals can create negative compatibility impacts in residential neighborhoods, including inappropriate commercialization and disruption of the character of single-family neighborhoods, excessive noise, on-street parking that overwhelms use by local residents, and accumulation of trash, as well as diminished public health, safety, and welfare; and

WHEREAS, consistent with state law and the Miami-Dade County Home Rule Charter, Miami-Dade County may also enact a variety of regulations on vacation rentals including, but not limited to, regulations pertaining to zoning, consumer protection, and code compliance and

WHEREAS, these regulations provide requirements that apply to those who wish to offer and use vacation rentals, as well as to the platform entities that facilitate vacation rentals in this community; and

WHEREAS, to protect residential neighborhoods in the County from disruptive and incompatible uses and to protect the health, safety, and welfare of the community, this Board wishes to enact regulations pertaining to vacation rentals; and

WHEREAS, these regulations are designed to preserve the quiet nature and atmosphere of residential areas and ensure to the County's residents the tranquility and peaceful enjoyment of their neighborhoods; and

WHEREAS, at the same time, these regulations seek to provide law-abiding residents the opportunity to offer and use vacation rentals in an orderly manner, consistent with state and local law and with neighborhood character; and

WHEREAS, the purpose of these regulations is to promote compliance with the County code for those who wish to offer and use vacation rentals in this community,

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
MIAMI-DADE COUNTY, FLORIDA:**

Section 1. The foregoing recitals are hereby approved and incorporated into this ordinance as if fully set forth herein.

Section 2. Section 33-28 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:¹

>>Sec. 33-28. Vacation Rentals.

(A) Applicability and purpose.

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

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

- (1) Peer-to-peer or platform entity shall mean any person, service, business, company, marketplace, or other entity that provides property owners and responsible parties a platform or means to offer vacation rentals to transient occupants, whether through the internet or other means.**

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

- (2) Property owner shall mean the person who, or entity that, owns the property being used or occupied as a vacation rental.
- (3) Responsible party shall mean the person or entity authorized by the property owner to obtain a Certificate of Use for a vacation rental, and who will be:
 - (a) responsible for ensuring compliance with all regulations related to vacation rentals; and
 - (b) available to respond 24 hours per day, 7 days per week to any issue that arises relating to the vacation rental.

The property owner may serve as responsible party.

- (4) Transient occupant shall mean any person who rents or occupies any dwelling unit or residence or part thereof for less than 30 days or one calendar month, whichever is less, and any guest or invitee of such person.
- (5) Vacation rental shall mean any dwelling unit or residence, including, but not limited to, any unit or group of units in a condominium, cooperative, or apartment building, that is rented in whole or in part to a transient occupant for a period of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place that may be rented to a transient occupant, but shall not include a hotel, motel, or bed and breakfast as defined in this code and referenced in the CDMP. For purposes of this section, the term vacation rental is synonymous with the term short-term residential rental.

(C) Certificate of Use Required. No property owner, responsible party, or peer-to-peer or platform entity shall offer as a vacation rental, or allow any person to rent or occupy as a vacation rental, any property in whole or in part within the unincorporated area of Miami-Dade County, unless a Certificate of Use has first been obtained in accordance with the provisions of this section.

(1) Application. A complete Certificate of Use application shall be submitted to the Department online or in hard copy. The application must be signed under oath or affirmation, and shall include the following:

- (a) The address and legal description of the vacation rental property;
- (b) Name, address, and phone number of the property owner;
- (c) Name, address, and phone number of the responsible party;
- (d) Name and contact information for the peer-to-peer or platform entity or entities on which the vacation rental is, or will be, listed for rent;
- (e) Statement that the responsible party is, or will be, remitting all applicable local Miami-Dade County business and tourist taxes; or that a peer-to-peer or platform entity through which vacation rentals are booked will be remitting all such taxes associated with the vacation rental on the responsible party's behalf;
- (f) Statement that the responsible party has the permission of the property owner and authority to offer the property as a vacation rental and act as the responsible party;
- (g) Statement as to whether the entire property, or just a part thereof (i.e., a room or rooms), will be used as a vacation rental; and

- (h) Statement that insurance coverage will be in effect at all times while the property is being used as a vacation rental to cover liability for injury or harm to transient occupants or other invitees, and acknowledging that a standard homeowner's or renter's insurance policy may not necessarily provide such liability coverage while the property is used as a vacation rental;
- (i) Statement acknowledging that the responsible party has received information explaining that using the property as a vacation rental could result in loss of the Homestead Exemption, and has provided such information to the property owner;
- (j) Statement indicating how many times, and for how many days in all, the property was used as a vacation rental within the previous calendar year;
- (k) Statement acknowledging that the vacation rental must be registered with the Florida Department of Revenue, or successor agency, for purposes of collecting and remitting applicable state taxes and all such state taxes have been, or will be, paid;
- (l) Statement acknowledging that a vacation rental license, issued by the Florida Department of Business and Professional Regulation, or successor agency, must be obtained; and
- (m) Statement acknowledging that the property is, and will be at all times during which it is used as a vacation rental, maintained in compliance with the vacation rental standards set forth in subsection (D) below.

- (2) Supporting documentation. The responsible party shall maintain all required licenses, records, and other documentation sufficient to demonstrate that the statements and information required by subsection (1) above are true and accurate. All such licenses, records, and other documentation shall be provided upon request, and failure to do so may result in the denial, suspension, or revocation of the Certificate of Use.
- (3) Providing false information. Providing false or misleading information in an application for a Certificate of Use is grounds to deny or revoke the Certificate of Use. A determination that false or misleading information was provided in an application is appealable to a hearing examiner in accordance with the procedures set forth in chapter 8CC or section 1-5, or both.
- (4) Annual renewal. The Certificate of Use shall be renewed annually. A Certificate of Use may not be renewed if there are any outstanding fines or liens for violations of this code.
- (5) Inspection. Upon the issuance or renewal of a Certificate of Use, the vacation rental property shall be subject to inspection to ensure compliance with all applicable code requirements. At the time of such inspection, the responsible party shall provide all licenses, records, and other documentation sufficient to demonstrate compliance with all requirements of this section.
- (6) Enforcement history.
 - (a) When reviewing an application to obtain or renew a Certificate of Use, the Department shall consider the violation history of the property identified in the application. If the violation history shows three or more violations of this section within the preceding 24 months, the Department shall not issue or renew the Certificate of Use unless:

- (i) all outstanding violations or liens are first satisfied and corrected; and
 - (ii) a bond in the amount of \$10,000.00 is provided to the Department, in the form approved by the Director. The bond shall be subject to forfeiture for future violations, as set forth in this section.
 - (b) When the violation history shows three or more violations of this section within the preceding 24 months, the Department shall notify the peer-to-peer or platform entity, if known, of the property at which the violations have occurred, and the dates of the violations.
 - (c) When calculating whether a vacation rental property has three or more violations within the preceding 24 months, if one or more unresolved citations that will affect the decision to issue or renew the Certificate of Use are pending, the Director may issue or renew a Certificate of Use on a provisional basis and for a limited time, which may be extended by the Director for good cause shown.
- (D) *Vacation Rental Standards.* The following vacation rental standards shall govern vacation rentals in unincorporated Miami-Dade County:
- (1) *Duties of peer-to-peer or platform entity.* For each vacation rental listed or offered, a peer-to-peer or platform entity shall:
 - (a) provide notice of the requirements of this section to any person or entity listing or offering a vacation rental on its service or platform, and shall confirm that a Certificate of Use has been obtained in accordance with this section, prior to listing or offering each vacation rental;

- (b) only provide a listing for, or collect a fee for listing, a vacation rental that has obtained a Certificate of Use in accordance with this section;
- (c) include language in rental documents to discourage the secondary subletting of vacation rentals;
- (d) maintain records demonstrating that the requirements of this subsection have been satisfied, and such records shall be subject to inspection by the Department upon request; and
- (e) make available to the County for inspection upon request all records relating to any suspected violations of state or local law associated with any vacation rental property in unincorporated Miami-Dade County.

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

- (a) provide written notice to transient occupants, prior to occupancy of the vacation rental, of the vacation rental standards set forth herein and other applicable laws, ordinances, or regulations concerning noise, public nuisance, vehicle parking, solid waste collection, and common area usage. This information shall also be made available to each transient occupant inside the subject property;
- (b) provide notice to prospective transient occupants at the time the subject property is listed as a vacation rental of any limitations on the property pertaining to access for the disabled;

- (c) provide notice to the homeowner's association or condominium/cooperative association or board, if any, that the subject property will be used as a vacation rental and adhere to all policies, rules, and regulations of such association or board pertaining to vacation rentals;
 - (d) ensure compliance with all provisions of this section, including the vacation rental standards set forth herein, and promptly address and report any violations of this section or of such other law or regulation of which the responsible party knows or should know to the Department or law enforcement, as appropriate, as well as to the peer-to-peer or platform entity;
 - (e) ensure that any violations regarding the rental of the property are able to be promptly addressed and resolved 24 hours a day/7 days per week; and
 - (f) maintain a register with names and dates of stay of all guests, including but not limited to all transient occupants and their invitees, which shall be open to inspection by the County.
- (3) Maximum occupancy. Maximum overnight occupancy for vacation rentals shall be up to a maximum of two persons per bedroom, plus two additional persons per property, up to a maximum of 12 persons, excluding children under three years of age. At all other times, maximum occupancy for vacation rentals shall not exceed the maximum overnight occupancy of the vacation rental plus four additional persons per property, up to a maximum of 16 persons, excluding children under three years of age. For purposes of this subsection, "overnight" shall mean from 10:00 p.m. until 7:00 a.m. the following day. Notwithstanding the foregoing, at no time may the occupancy of a vacation rental exceed the maximum occupant load for the property under the Florida Building Code.

- (4) Responsible party onsite. The property on which a vacation rental is operated shall be occupied by the responsible party during the time it is rented to any transient occupant; or, if not so occupied by the responsible party during the time it is used as a vacation rental, the property shall be a residence in which the responsible party resides for more than six months per calendar year.
- (5) Solid waste handling and containment. Solid waste containers sufficient to handle the maximum occupancy permitted shall be maintained in accordance with chapter 15. All regulations regarding screening and storage of solid waste containers shall apply to vacation rentals. For purposes of this section, and as required in section 15-5, all solid waste containers shall be placed at curbside or other designated collection area only on scheduled collection days, no later than 7:00 a.m., and shall be removed therefrom that same day once collection has occurred.
- (6) Advertising and signs. Signs shall only be allowed to the extent permitted by the regulations in the code applicable to the relevant zoning district. Any advertisements or signs pertaining to vacation rentals that are inconsistent with the requirements, restrictions, and regulations of the Certificate of Use or these vacation rental standards shall be deemed prima facie evidence in any enforcement action that a vacation rental is being operated in violation of this section.
- (7) Sexual offenders and sexual predators.
 - (a) If the vacation rental property is within 2,500 feet of a school, pursuant to section 21-283 it shall be a violation to allow any person to occupy the property with knowledge that such person is a registered sexual offender or registered sexual predator in any jurisdiction. The responsible party shall be required to obtain confirmation of a nationwide search from the Miami-Dade County Police Department or other law enforcement agency

that the prospective transient occupant or occupants is not a registered sexual offender or sexual predator as a result of a conviction of a sexual offense, as defined in section 21-280. The responsible party may call the Miami-Dade County Answer Center (311) to obtain assistance or referrals to determine whether a prospective transient occupant is a sexual offender or predator and to determine whether a residence is 2,500 feet from a particular school.

(b) If the vacation rental property is within 2,500 feet of a school, pursuant to section 21-281 it shall be a violation of this section for a sexual offender or sexual predator to occupy the property for a period of four or more days in any month.

(8) *Posting of Certificate of Use.* Whenever a property is being used as a vacation rental, the Certificate of Use required by this section shall be posted on the back of, or next to, the main entrance door on the inside of the vacation rental and shall include, at a minimum, the name, address, and phone number of the responsible party and the maximum occupancy of the vacation rental.

(9) *Parking and vehicles.* All parking must comply with article VII of this chapter, and all other applicable sections of this code. In addition, all vehicles associated with the vacation rental, whether in the possession or control of the property owner, responsible party, or transient occupant, shall only be parked within a driveway or in a designated parking area on the subject property; or, where there is no such driveway or designated parking area, vehicles shall only be parked on the street or swale directly in front of the subject property. Transient occupants shall not be permitted to park more than two vehicles at any one time on the subject property or on the street or swale during the rental period.

- (10) Noise. All transient occupants shall abide by section 21-28 of this code, which prohibits unreasonably loud, excessive, unnecessary, or unusual noise. In addition, outdoor amplified sound at a vacation rental shall not be permitted at any time.
 - (11) Public nuisance. The responsible party and all transient occupants shall abide by all applicable state and local public nuisance laws and ordinances, including, but not limited to, article XIII A of this code, which prohibits any place or premise from being used as the site for the unlawful sale or delivery of controlled substances, prostitution, youth and street gang activity, gambling, illegal sale or consumption of alcoholic beverages, or lewd or lascivious behavior that adversely affects the public health, safety, morals, and welfare.
 - (12) Pets. If the responsible party permits transient occupants to have pets at the vacation rental, such pets shall be at all times secured within the property lines or on a leash, but shall not be tethered. Continual nuisance barking by pets is prohibited. The keeping of pets shall be subject to the regulations of this chapter and chapter 5 of this code regarding animals.
 - (13) Compliance with applicable laws. In addition to the foregoing, the responsible party and all transient occupants shall comply with all other applicable local, state, and federal laws, regulations, rules, and standards, including, but not limited to, those pertaining to anti-discrimination, disability, and fair housing to the extent applicable.
- (E) Enforcement. The requirements of this section may be enforced in accordance with the following:
- (1) Penalties. Any person operating a vacation rental without a Certificate of Use or in violation of the vacation rental standards or any other provisions in this section shall be subject to the penalties set forth in section 8CC-10 and section 1-5, or both, of this code and to all other enforcement measures authorized in this code or by other applicable law.

(2) Forfeiture of bond.

- (a) Where a bond is required to obtain or renew a Certificate of Use, if the vacation rental property is cited for a violation of this section within 12 months of providing the bond, and that citation is later resolved adversely to the owner or responsible party, then the bond shall be deemed forfeited, and the Certificate of Use for that vacation rental shall be revoked and may not be reissued for 12 months.
- (b) If there are no violations for 12 months after providing the security, the Department shall release the bond upon written request from the responsible party. Until the responsible party obtains release, the bond shall continue to be subject to forfeiture for future violations.

- (3) Joint and several liability. The property owner of the vacation rental property shall be liable for any violations of this section, any rule or regulation promulgated under this section, or any order of the Director made under this section. In addition, whenever two or more persons commit such a violation, each violator shall be jointly and severally liable for any fines or other damages assessed. This applies to situations where a property owner, responsible party, peer-to-peer or platform entity, or transient occupant, or any combination thereof, are together responsible for a violation of this section.<<

Section 3. Section 8CC-10 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 8CC-10. - Schedule of civil penalties.

The following table shows the sections of this Code, as they may be amended from time to time, which may be enforced pursuant to the provisions of this chapter; and the dollar amount of civil penalty for the violation of these sections as they may be amended.

The "descriptions of violations" below are for informational purposes only and are not meant to limit or define the nature of the violations or the subject matter of the listed Code sections, except to the extent that different types of violations of the same Code section may carry different civil penalties. For each Code section listed in the schedule of civil penalties, the entirety of that section may be enforced by the mechanism provided in this Chapter 8CC, regardless of whether all activities proscribed or required within that particular section are described in the "Description of Violation" column. To determine the exact nature of any activity proscribed or required by this Code, the relevant Code section must be examined.

Code Section	Description of Violation	Civil Penalty
* * *		
33-25.1	Illegally establishing a home office	500.00
>>33-28	<u>Failure to obtain Certificate of Use for vacation rental</u>	
	<u>First offense</u>	<u>\$100</u>
	<u>Second offense</u>	<u>\$1,000.00</u>
	<u>Third offense and subsequent violations thereafter</u>	<u>\$2,500.00</u>

<u>33-28</u>	<u>Violation of Vacation Rental Standard or any other provision of section 33-28</u>	
	<u>First offense</u>	<u>\$100</u>
	<u>Second offense occurring within 24 months of first offense</u>	<u>\$1,000</u>
	<u>Third offense and subsequent offense occurring within 24 months of the most recent two preceding offenses</u>	<u>\$2,500</u> <<
33-29	Illegally maintaining or storing construction materials or equipment without active building permit	200.00
* * *		

Section 4. The provisions of section 33-28(C) shall not take effect until sixty (60) days from the effective date of this ordinance.

Section 5. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 6. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 7. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:

James Eddie Kirtley
Richard D. Schevis



Prime Sponsor: Commissioner Sally A. Heyman