

ORDINANCE 19 - 17

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL LAND USE AND DEVELOPMENT REGULATIONS ("LUDR"), ARTICLE II, DISTRICT REGULATIONS, SECTION 2.7, DISTRICT REGULATIONS, TO ADD VACATION RENTALS AS A PERMITTED USE IN THE SINGLE-FAMILY RESIDENTIAL (R-1A AND R-1B), MULTI-FAMILY RESIDENTIAL (R-3), RESIDENTIAL DEVELOPMENT (RD), RESIDENTIAL ESTATE (RE), RESIDENTIAL RECEIVING (RX), PEDESTRIAN COMMERCIAL DISTRICT (C-1), PROFESSIONAL OFFICE (P-1), AGRICULTURAL (A), VILLAGE (VILL), CORRIDOR (CORR), SOUTH CAPE DOWNTOWN (SC), AND MARKETPLACE-RESIDENTIAL (MR) ZONING DISTRICTS; AMENDING ARTICLE III OF THE LUDR, SUPPLEMENTARY DISTRICT REGULATIONS, CREATING SECTION 3.30 TO ESTABLISH REGULATIONS PERTAINING TO VACATION RENTALS; PROVIDING FOR PURPOSE; PROVIDING FOR DEFINITIONS; PROVIDING FOR REGISTRATION REQUIRED, VACATION RENTAL CERTIFICATE, ADMINISTRATION; PROVIDING FOR APPLICATION FOR REGISTRATION, FEES; PROVIDING FOR VACATION RENTAL CERTIFICATE DURATION, RENEWAL, NON-TRANSFERABLE; PROVIDING FOR RESPONSIBLE PARTY REQUIRED; PROVIDING FOR VACATION RENTAL STANDARDS AND REQUIREMENTS; PROVIDING FOR VACATION RENTAL/LEASE AGREEMENT MINIMUM PROVISIONS AND REQUIREMENTS; PROVIDING FOR POSTING OF VACATION RENTAL INFORMATION; PROVIDING FOR INSPECTIONS OF VACATION RENTALS; PROVIDING FOR VIOLATIONS, ENFORCEMENT, REVOCATION, NOTICE, APPEALS; PROVIDING FOR RENTAL AGREEMENT VESTING; AMENDING ARTICLE XI OF THE LUDR, DEFINITIONS, SECTION 11.1, DEFINITIONS, REGARDING THE DEFINITION OF A DWELLING UNIT; AND AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 11, LOCAL BUSINESS TAX, ARTICLE I, GENERAL PROVISIONS, SECTION 11-16, SCHEDULE OF BUSINESS TAXES, TO ESTABLISH LOCAL BUSINESS TAX REQUIREMENTS FOR VACATION RENTALS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

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

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

WHEREAS, the City of Cape Coral established residential zoning districts within its Land Use and Development Regulations ("LUDR") consistent with the residential land use designations of the City of Cape Coral Comprehensive Plan Future Land Use Map; and; and

WHEREAS, the LUDR provides a list of permitted uses and special exception uses (also known as conditional uses) that are allowed within each zoning district and prohibits any use not substantially similar to those uses; and

WHEREAS, prior to 2011, Florida's municipalities and counties regulated local land use issues and decisions under the Home Rule authority granted to 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, HB 883 created a new classification of public lodging establishment known as vacation rentals, as defined in Section 509.242(c), Florida Statutes, as "any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project."; and

WHEREAS, Subsection 509.013(4)(a)1., Florida Statutes, defines a transient public lodging establishment as "any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three (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; and

WHEREAS, HB 883 prevented local communities from enacting regulations necessary to address any negative impacts caused by 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 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, vacation rental occupants, due to the transient nature of their occupancy, are unfamiliar with local evacuation plans, the location of fire extinguishers, residence's exit routes, pool and home safety features, and other safety measures that would readily be provided to guests in traditional lodging establishments; and

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

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

WHEREAS, traditional lodging establishments (hotels, motels, and bed & breakfasts) are subject to stricter development standards, undergo annual inspections, and have more stringent operational and business requirements than vacation rentals; and

WHEREAS, many local jurisdictions in the state of Florida have standards in place to minimize any negative impacts caused by vacation rentals; and

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

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

WHEREAS, the City desires to encourage vacation rentals that are safe, fit in with the character of the neighborhood, provide positive impacts on the community, preserve property values, and achieve greater neighborhood compatibility; and

WHEREAS, the City seeks to balance respect for private property rights and incompatibility concerns between investor-backed vacation rentals and more permanent family residences through the use of reasonable development and regulation standards; and

WHEREAS, these standards are deemed necessary by the Cape Coral City Council in order to preserve property values and to protect the health, safety, and general welfare of permanent residences, property owners, investors, transient occupants, and visitors alike; and

WHEREAS, the application of these minimum standards and requirements to vacation rental properties will help ensure that transient occupants are provided the same minimum protections as are required by current statutes and codes for residential properties; and

WHEREAS, the Cape Coral City Council hereby finds that this ordinance is in the best interest of the public health, safety, and welfare.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. The City of Cape Coral Land Use and Development Regulations, Article II, District Regulations, Section 2.7, District Regulations, Subsection .1, Single-Family Residential Districts, is hereby amended as follows:

§ 2.7 District regulations.

- .1 *Single-Family Residential Districts (R-1A and R-1B).*
- ...
- B. *Permitted uses (all districts).*
- ...
- 7. Parks – Group I; ~~and~~
- 8. Single-family dwelling; ~~and~~
- 9. Vacation rental (permitted only in conjunction with permitted use §2.7.1B.8. and subject to §3.30).
- ...

SECTION 2. The City of Cape Coral Land Use and Development Regulations, Article II, District Regulations, Section 2.7, District Regulations, Subsection .2, Multi-Family Residential District, is hereby amended as follows:

§ 2.7 District regulations.

- ...
- .2 *R-3 Multi-Family Residential District.*
- ...
- B. *Permitted uses.*
- ...
- 2. Duplex dwellings (see special regulations .2D.);
- ...
- 8. Multi-family dwellings;
- ...
- 12. Single-family dwellings; ~~and~~
- 13. Conjoined residential structures; ~~and~~
- 14. Vacation rental (permitted only in conjunction with permitted use §2.7.2B.2., §2.7.2B.8., §2.7.2B.12., or §2.7.2B.13. and subject to §3.30).
- ...

SECTION 3. The City of Cape Coral Land Use and Development Regulations, Article II, District Regulations, Section 2.7, District Regulations, Subsection .3, Residential Development District, is hereby amended as follows:

§ 2.7 District regulations.

- ...
- .3 *RD Residential Development District.*
- ...
- B. *Permitted uses.*
- ...
- 3. Duplex dwelling (see special regulations D.);
- ...
- 9. Multi-family dwelling;
- ...
- 13. Single-family dwelling; ~~and~~
- 14. Conjoined residential structures; ~~and~~
- 15. Vacation rental (permitted only in conjunction with permitted use §2.7.3B.3., §2.7.3B.9., §2.7.3B.13., or §2.7.3B.14. and subject to §3.30).
- ...

SECTION 4. The City of Cape Coral Land Use and Development Regulations, Article II, District Regulations, Section 2.7, District Regulations, Subsection .4, Residential Estate District, is hereby amended as follows:

§ 2.7 District regulations.

...

.4 RE Residential Estate District.

...

B. Permitted uses.

...

- 11. Single-family dwelling; ~~and~~
- 12. Stables, private (two acres minimum); and
- 13. Vacation rental (permitted only in conjunction with permitted use §2.7.4B.11. and subject to §3.30).

...

SECTION 5. The City of Cape Coral Land Use and Development Regulations, Article II, District Regulations, Section 2.7, District Regulations, Subsection .5, Residential Receiving District, is hereby amended as follows:

§ 2.7 District regulations.

...

.5 RX Residential Receiving District.

...

B. Permitted uses.

...

- 2. Duplex dwellings (with use of TDRs only);
- ...
- 8. Multi-family dwellings (with use of TDRs only);
- ...
- 11. Places of worship (one-acre minimum lot area); ~~and~~
- 12. Single-family dwelling; ~~and~~
- 13. Vacation rental (permitted only in conjunction with permitted use §2.7.5B.2., §2.7.5B.8., or §2.7.5B.12. and subject to §3.30).

...

SECTION 6. The City of Cape Coral Land Use and Development Regulations, Article II, District Regulations, Section 2.7, District Regulations, Subsection .7, Pedestrian Commercial District, is hereby amended as follows:

§ 2.7 District regulations.

...

.7 C-1 Pedestrian Commercial District.

...

B. Permitted uses.

...

- 41. Multi-family dwelling, only within the Mixed Use land use designation and within a PDP, or within the Flexible Development Overlay District (See special regulations);
- ...
- 72. Variety store; ~~and~~
- 73. Veterinary and animal clinics; ~~and~~
- 74. Vacation rental (permitted only in conjunction with permitted use §2.7.7B.41. and subject to §3.30).

...

SECTION 7. The City of Cape Coral Land Use and Development Regulations, Article II, District Regulations, Section 2.7, District Regulations, Subsection .9, Professional Office District, is hereby amended as follows:

§ 2.7 District regulations.

...

.9 P-1 Professional Office District.

...

B. Permitted uses.

...

- 13. Multi-family dwelling - only within a mixed use land use designation and within a PDP (see special regulations);
- ...
- 20. Studio; ~~and~~
- 21. Veterinary and animal clinics; ~~and~~
- 22. Vacation rental (permitted only in conjunction with permitted use §2.7.9B.13. and subject to §3.30).

SECTION 8. The City of Cape Coral Land Use and Development Regulations, Article II, District Regulations, Section 2.7, District Regulations, Subsection .11, Agricultural District, is hereby amended as follows:

§ 2.7 District regulations.

- ...
- .11 *Agricultural District (A).*
- ...
- B. *Permitted uses.*
- ...
- 11. Single-family dwelling (see special regulations for recreational vehicle parks);
- ...
- 31. Veterinary and animal clinics; ~~and~~
- 32. Wholesale establishments – Groups I and II; ~~and~~
- 33. Vacation rental (permitted only in conjunction with permitted use §2.7.11B.11. and subject to §3.30).

SECTION 9. The City of Cape Coral Land Use and Development Regulations, Article II, District Regulations, Section 2.7, District Regulations, Subsection .12, Village District, is hereby amended as follows:

§ 2.7 District regulations.

- ...
- .12 *Village District (Vill).*
- ...
- B. *Permitted uses.*
- ...
- 18. Conjoined residential structures (minimum three units);
- ...
- 41. Multi-family;
- ...
- 69. Variety stores; ~~and~~
- 70. Veterinary and animal clinics; ~~and~~
- 71. Vacation rental (permitted only in conjunction with permitted use §2.7.12B.18. or §2.7.12B.41. and subject to §3.30).

SECTION 10. The City of Cape Coral Land Use and Development Regulations, Article II, District Regulations, Section 2.7, District Regulations, Subsection .13, Corridor District, is hereby amended as follows:

§ 2.7 District regulations.

- ...
- .13 *Corridor District (Corr).*
- ...
- B. *Permitted uses.*
- ...
- 24. Conjoined residential structures (see dimensional regulations E.1.);
- ...
- 30. Duplex dwellings (see dimensional regulations E.1.);
- ...

- 58. Multi-family dwellings (see dimensional regulations E.1.);
- ...
- 86. Single-family dwellings (see dimensional regulations E.1.);
- ...
- 98. Warehouse, public (45,000 square feet minimum lot area); ~~and~~
- 99. Wholesale establishment – Group III (45,000 square feet minimum lot area); ~~and~~
- 100. Vacation rental (permitted only in conjunction with permitted use §2.7.13B.24., §2.7.13B.30., §2.7.13B.58., or §2.7.13B.86. and subject to §3.30).
- ...

SECTION 11. The City of Cape Coral Land Use and Development Regulations, Article II, District Regulations, Section 2.7, District Regulations, Subsection .15, South Cape Downtown District, is hereby amended as follows:

§ 2.7 District regulations.

...
 .15 *South Cape Downtown District (SC).*

...
 C. *Permitted and special exception uses.* Permitted and special exception uses shall be as provided in Table SC-1. The locations of such uses are regulated by street designations as follows:

...

<i>Table SC-1 PERMITTED AND SPECIAL EXCEPTION USES SOUTH CAPE DOWNTOWN DISTRICT</i>				
<i>Permitted and Special Exception Uses</i>	<i>Street Designation(a)</i>			
	<i>Parkway</i>	<i>Primary</i>	<i>Secondary</i>	<i>Tertiary</i>
<i>P - Permitted</i>	<i>SE - Special Exception</i>	<i>--- - Not Permitted</i>		
...				
27. Dwelling units:				
a. Conjoined residential structure (shall contain at least three units)	---	---	P(f)	P
b. Multi-family	P(g)(h)	P(g)(h)	P(f)	P
...				
83. Veterinary/animal clinics	P	P	P	P
84. <u>Vacation rental</u>	<u>P(o)</u>	<u>P(o)</u>	<u>P(o)</u>	<u>P(o)</u>
...				
(o) <u>Permitted only in conjunction with permitted use 27., "Dwelling Units," of this Table SC-1 and subject to §3.30</u>				

...

SECTION 12. The City of Cape Coral Land Use and Development Regulations, Article II, District Regulations, Section 2.7, District Regulations, Subsection .18, Marketplace Residential, is hereby amended as follows:

§ 2.7 District regulations.

...
 .18 *Marketplace-Residential (MR).*

...
 B. *Permitted uses.* (See § 2.7.18D.1., special regulations.)

- ...
 12. Conjoined residential structures (see § 2.7.18D.3., special regulations.);
- ...
 16. Duplex dwellings (see § 2.7.18D.3., special regulations.);
- ...

- 36. Multi-family dwellings (see § 2.7.18D.3., special regulations.);
- ...
- 57. Single family dwelling (see § 2.7.18D.2. and 3.h., special regulations.);
- ...
- 61. Variety stores; and
- 62. Veterinary and animal clinics; and
- 63. Vacation rental (permitted only in conjunction with permitted use §2.7.18B.12., §2.7.18B.16., §2.7.18B.36., or §2.7.18B.57. and subject to §3.30).

SECTION 13. The City of Cape Coral Land Use and Development Regulations, Article III, Section 3.30, is hereby created to read as follows:

§ 3.30 Vacation rentals.

.1 Purpose. The City Council finds that certain transitory uses of residential property tend to affect the residential character of the community and may be injurious to the health of the community. The City Council also finds that certain transitory uses of residential property positively affect commerce within the City with visitors enjoying the use of property and purchasing goods and services within the community. Therefore, it is necessary and in the interest of the public health, safety, and welfare to monitor and provide reasonable means for the City of Cape Coral to mitigate impacts created by such transitory uses of residential property and dwelling units within the City. In support of safe and positive economic development in the City of Cape Coral, it shall be unlawful for any owner of any property within the geographic bounds of the City to rent or operate a Vacation Rental, as defined below, contrary to the procedures and regulations established in this section, except as specifically provided herein.

.2 Definitions. For the purpose of this Section 3.30, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein. Words not defined herein shall be given their meaning as provided in Article XI, Definitions, of the Cape Coral Land Use and Development Regulations.

RESIDENTIAL PROPERTY. Any single-family residence, duplex, multi-family dwelling, or conjoined residential structure.

RESPONSIBLE PARTY. The property owner, or the person designated by the property owner, to be called upon to answer for the maintenance of the property and the conduct and acts of occupants of Vacation Rentals. The purpose of the Responsible Party is to coordinate initial and routine compliance inspections with the City as well as to respond to complaints and problems related to the Vacation Rental.

TRANSIENT OCCUPANT. Any person, or guest or invitee of such person, who occupies or is in actual or apparent control or possession of a dwelling unit registered as a Vacation Rental. It shall be a rebuttable presumption that any person who holds themselves out as being an occupant, or guest of an occupant, of a Vacation Rental is a Transient Occupant.

VACATION RENTAL. Any individually or collectively owned Residential Property or dwelling unit that is rented or leased 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 or leased to guests for a period of less than thirty (30) days.

.3 Registration required; vacation rental certificate; administration. Beginning on October 1, 2017, it shall be unlawful for any person to rent or lease a Vacation Rental to another person within the City of Cape Coral, or to advertise or offer such rental services within the City, unless the person has registered the Vacation Rental with the City and has been issued a Vacation Rental Certificate in accordance with the provisions of this Section 3.30. Each dwelling unit operated as a Vacation Rental shall require a separate Vacation Rental Certificate. Guest/staff quarters are prohibited from being used as a Vacation Rental.

Notwithstanding anything to the contrary in this Section 3.30, a property owner operating a Vacation Rental in the City on the effective date of this ordinance, July 1, 2017, shall apply to the City for an initial Vacation Rental Certificate on or before October 1, 2017. A property owner that submits an application for a Vacation Rental Certificate by October 1, 2017, may continue

operating the dwelling unit as a Vacation Rental while the application is pending and until such time as the City completes its review of the application and conducts an inspection of the property. In the event that the Vacation Rental Certificate is denied by the City, the property owner shall immediately cease operating the subject dwelling unit as a Vacation Rental.

The responsibility for the administration of this Section 3.30 is vested in the Director of the Department of Community Development ("Director"), or designee, who is responsible for granting, denying, revoking, and renewing Vacation Rental Certificates for proposed and existing Vacation Rentals, as set forth in this section.

.4 *Application for registration; fees.* A property owner seeking an initial or renewal Vacation Rental Certificate in the City of Cape Coral shall submit a completed Vacation Rental registration application on a form established by the City. The Vacation Rental registration application shall include, at a minimum, the following information and submittals:

- a. The legal description of the dwelling unit offered for rental or lease;
- b. Name, address, and phone number of the owner of said property;
- c. Proof of the owner's current ownership of the property;
- d. The website address for any and all websites that the property owner uses to advertise the dwelling unit for rent or lease as a Vacation Rental;
- e. Names, addresses, and phone numbers of the designated Responsible Party and an alternate contact person for said property, which shall be twenty-four (24) hours, seven (7) days a week contact numbers;
- f. Acknowledgments by the property owner of the following:
 - (1) That the owner shall comply with all applicable City, county, state, and federal laws, rules, regulations, ordinances, and statutes regarding Vacation Rentals;
 - (2) That all vehicles parked at the Vacation Rental shall comply with all applicable laws, rules, regulations, ordinances, and statutes;
 - (3) That it shall be unlawful to allow or make any noise or sound that exceeds the limits set forth in all applicable laws, rules, regulations, ordinances, and statutes;
 - (4) That no refuse or garbage receptacle shall be located at the curb for pickup before 5:00 p.m. of the day prior to pick up, and the receptacle shall be removed before midnight of the day of pick up, as set forth in Section 9-67, Cape Coral Code of Ordinances;
 - (5) That any person, without being authorized, licensed, or invited, who willfully enters or remains in any Vacation Rental, or, having been authorized, licensed, or invited, is warned by the owner to depart the property and refuses to do so, commits the offense of trespass in a structure; and
 - (6) That the City of Cape Coral is authorized to conduct inspections of the Vacation Rental at reasonable times, as it deems necessary, to ensure compliance with all of the provisions of this section.
- g. A non-refundable annual Vacation Rental registration fee shall be paid to the City, at the time of application, for each dwelling unit used as a Vacation Rental, in an amount established by resolution of the City Council. An applicant shall not be eligible for a refund of a registration fee for any reason including, but not limited to, a denied or revoked Vacation Rental Certificate;
- h. A copy of the Vacation Rental's current and active certificate of registration with the Florida Department of Revenue for the purposes of collecting and remitting sales surtaxes, transient rental taxes, and any other taxes required by law to be remitted to the Florida Department of Revenue;
- i. A copy of the Vacation Rental's current and active license with the Florida Department of Business and Professional Regulation as a transient public lodging establishment;
- j. A copy of the current and active Local Business Tax Receipt from the City of Cape Coral, pursuant to Chapter 11 of the Code of Ordinances;
- k. Interior building sketch by floor – A building sketch (may be hand drawn) by floor shall be provided, showing a floor layout and demonstrating compliance with the standards and requirements set forth in this Section 3.30. The sketch provided shall be drawn to scale, showing all bedrooms and sleeping areas, other rooms, exits, hallways, stairways, smoke and carbon monoxide detectors, and fire extinguishers;
- l. Exterior site sketch – An exterior sketch of the property (may be hand drawn) shall be provided, demonstrating compliance with the standards and requirements set forth in this Section 3.30. The sketch provided shall be drawn to scale, showing all structures,

- pool, spa, fence, driveway, and ingress and egress access points, including areas provided for parking and trash collection;
- m. An affidavit from the property owner agreeing to maintain compliance with the Vacation Rental standards and requirements contained herein, plus any other applicable City, county, state, and federal laws, rules, regulations, ordinances, and statutes to include, but not be limited to, Chapter 509, Florida Statutes, and Rule Chapters 61C and 69A, Florida Administrative Code, or such successor statutes or rules as may be applicable;
- n. The property owner shall indicate whether the owner has ever had a Vacation Rental Certificate revoked in the City, and, if so, state the address(es) of the property and the date(s) of any prior revocation; and
- o. Any other information deemed necessary by the City to demonstrate compliance with the standards and requirements set forth in this Section 3.30.

The submission of an incomplete Vacation Rental registration application shall result in rejection of the application by the Director, or designee. The Director, or designee, shall notify the applicant in writing of any missing information that is required. Any missing information shall be provided to the Director, or designee, within thirty (30) calendar days from the date of the City's notice, or the application shall be denied and the Vacation Rental Certificate shall not be issued.

The property owner shall notify the Director, or designee, within fifteen (15) calendar days of any changes in the information provided to the City pursuant to this section. It shall be unlawful for any person to give any false or misleading information in connection with the application for a Vacation Rental registration required by this Section 3.30. In addition, any false statements made in an application shall be grounds for the revocation of any certificate issued pursuant to such application.

.5 *Vacation rental certificate duration; renewal; non-transferable.* A Vacation Rental Certificate issued pursuant to this section shall expire one (1) year after the date of issuance by the City, and may be annually renewed thereafter if the property is in compliance with this section. A property owner shall register and apply annually for a renewal of the Vacation Rental Certificate no later than sixty (60) days prior to the expiration date of the previous certificate. A Vacation Rental Certificate shall not be eligible for renewal until the property is inspected by the City pursuant to Section 3.30.10. Late registration fees, if any, shall be established by resolution of the City Council.

Notwithstanding anything to the contrary in this Section 3.30, a property owner that has submitted an application to the City for the renewal of a Vacation Rental Certificate may continue operating the dwelling unit as a Vacation Rental while the application is pending and until such time as the City completes its review of the application and conducts an inspection of the property. In the event that the renewal of the Vacation Rental Certificate is denied by the City, the property owner shall immediately cease operating the subject dwelling unit as a Vacation Rental.

Vacation Rental Certificates are non-transferable and non-assignable. If the ownership of any Vacation Rental is sold or otherwise transferred, any outstanding Vacation Rental Certificate as to that Vacation Rental shall be null and void upon the sale or transfer. A property owner shall notify the City within fifteen (15) calendar days of the sale or transfer of any Vacation Rental.

.6 *Responsible party required.* Whenever any property is required to be registered under this section, the property owner shall designate a natural person who resides within Lee County, Florida, to serve as the Responsible Party. A Responsible Party shall be designated and such name and contact information shall be submitted to the City with the application for registration. The property owner shall also provide the City with the name, address, and phone number of an alternate contact person in the event that the designated Responsible Party is unavailable. It is the duty of the Responsible Party to:

- a. Inform all guests, in writing, prior to occupancy of the property, of applicable City of Cape Coral regulations concerning noise, vehicle parking, garbage, and common area usage, with a copy of the applicable regulations printed in the English language and posted prominently near the main entrance or on the refrigerator of the Vacation Rental;
- b. See that the provisions of this Section 3.30 are complied with and promptly address any violations of this section or any violations of law which may come to the attention of the responsible party;

- c. Be available by landline or mobile telephone at the phone number provided to the City twenty-four (24) hours a day, seven (7) days a week, and capable of handling any issues arising from the Vacation Rental use;
- d. If necessary, be willing and able to come to the Vacation Rental unit within two (2) hours following notification from an occupant, the property owner, or the City of Cape Coral to address issues related to the Vacation Rental;
- e. Maintain the Vacation Rental property free of garbage and litter, provided however, that this subsection shall not prohibit the storage of garbage and litter in authorized receptacles for collection; and
- f. Monitor and visit the Vacation Rental at least once monthly to assure continued compliance with the requirements of this section.

A property owner may change the designation of a Vacation Rental Responsible Party, however, there shall only be one (1) designated Responsible Party for each Vacation Rental at any given time. To change the designated Responsible Party, the property owner shall notify the Director, or designee, in writing within fifteen (15) calendar days of such change via a completed form provided by the City.

Notwithstanding anything to the contrary in this Section 3.30, the property owner shall ultimately be responsible for compliance with all of the provisions of this section.

.7 Vacation rental standards and requirements. The following standards shall govern the use of a Vacation Rental as a permitted use:

- a. Minimum life/safety requirements:
 - (1) Swimming pool, spa and hot tub safety. Any swimming pool, spa, and hot tub shall comply with the standards of the Residential Swimming Pool Safety Act set forth at Chapter 515, Florida Statutes, in effect at the time of an annual inspection by the City.
 - (2) Sleeping rooms. All sleeping rooms shall meet the minimum requirements of the Florida Building Code in effect at the time of an annual inspection by the City.
 - (3) Smoke and carbon monoxide (CO) detection and notification system. If a working interconnected and hard-wired smoke and carbon monoxide (CO) detection and notification system is not in place within the 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.
 - (4) 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 dwelling 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.
- b. Solid waste handling and containment. Refuse and garbage receptacles shall be maintained in accordance with all applicable laws, rules, regulations, ordinances, statutes, and standards. For purposes of this section, refuse and garbage receptacles shall not be placed curbside before 5:00 p.m. of the day prior to pick up, and the receptacle shall be removed before midnight of the day of pick up.
- c. Minimum vacation rental/lease agreement wording. There shall be a written rental/lease agreement between a Vacation Rental owner and a transient occupant, which shall contain the minimum information provided in Subsection 3.30.8.
- d. Minimum vacation rental required posting information. The Vacation Rental shall be posted with the information prescribed in Subsection 3.30.9.
- e. The owner shall designate a Vacation Rental Responsible Party and alternate contact person capable of meeting the duties provided in Subsection 3.30.6.
- f. Advertising. Any advertising of the Vacation Rental unit shall conform to the information included in the Vacation Rental Certificate and shall include the Vacation Rental Certificate number issued by the City.
- g. Sexual offenders and sexual predators. It is unlawful to allow another person to occupy any Residential Property as a Vacation Rental within the City of Cape Coral, with the knowledge that it will be occupied by a person prohibited from establishing a permanent or temporary residence at said Residential Property pursuant to Chapter 12 of the Code of Ordinances, if such place, structure or part thereof, trailer, or other

conveyance, is located within two thousand five hundred (2,500) feet of any school, park, playground, or child care facility where children regularly congregate.

h. Notice: Owners of Vacation Rentals shall not qualify for the owner-builder exemption provided in Section 489.103(7)(a), Florida Statutes, and shall hire licensed contractors for all permitted work at the Vacation Rental.

i. The Vacation Rental shall comply with all applicable City, county, state, and federal laws, rules, regulations, ordinances, statutes, and standards to include, but not be limited to, Chapter 509, Florida Statutes, and Rule Chapters 61C and 69A, Florida Administrative Code, or such successor laws, rules, regulations, ordinances, statutes, and standards as may be applicable.

.8 *Vacation rental/lease agreement minimum provisions and requirements.* Any rental/lease agreement between a Vacation Rental owner and a Transient Occupant shall, at a minimum, contain the following information:

a. The name and home address of the primary Transient Occupant of the Vacation Rental; and

b. A statement that all Transient Occupants shall evacuate from the Vacation Rental upon the declaration of any evacuation order issued by City, county, state, or federal authorities.

A copy of the rental/lease agreement shall be retained by the property owner and the designated Responsible Party for a period of one (1) year following the end of each rental period. At the City's request, the property owner or Responsible Party shall provide the City with a copy of the rental/lease agreement.

.9 *Posting of vacation rental information.* In each Vacation Rental, located on the back or next to the main entrance door or on the refrigerator, there shall be posted the following information:

a. The names, addresses, and emergency contact phone numbers of the designated Vacation Rental Responsible Party and an alternate contact person;

b. Notice that quiet hours are to be observed between 11:00 p.m. and 7:00 a.m. daily, pursuant to Section 12-22, Cape Coral Code of Ordinances;

c. The maximum number of vehicles that can be parked at the Vacation Rental;

d. Notice that any person, without being authorized, licensed, or invited, who willfully enters or remains in any Vacation Rental, or having been authorized, licensed, or invited, is warned by the owner to depart the property and refuses to do so, commits the offense of trespass in a structure;

e. The days and times of trash pickup and recycling;

f. The location of the nearest hospital;

g. The emergency police phone number is 9-1-1;

h. The local non-emergency police phone number; and

i. Notice that all Transient Occupants shall evacuate from the Vacation Rental upon the declaration of any evacuation order issued by City, county, state, or federal authorities.

.10 *Inspections of vacation rentals.*

a. An inspection of the Residential Property or dwelling unit by the City for compliance with this Section 3.30 is required prior to the issuance of an initial or renewal Vacation Rental Certificate. If violations are found, all violations shall be corrected and the dwelling unit shall be re-inspected prior to the issuance of a Vacation Rental Certificate. Inspection and re-inspection fees shall be established by resolution of the City Council.

b. The Vacation Rental Responsible Party is required to schedule any inspections required by this section. If an inspector has made an appointment with the Responsible Party to complete an inspection, and the Responsible Party fails to admit the inspector at the scheduled time, the property owner shall be charged a "no-show" inspection fee in an amount established by resolution of the City Council to cover the expenses incurred by the City.

c. If the inspector is denied admittance by the Vacation Rental Responsible Party in at least three (3) attempts to complete an inspection of the Vacation Rental, the inspector shall provide written notice of failure of inspection to the owner at the address shown on the existing Vacation Rental Certificate or the application for a Vacation Rental Certificate. A notice of failure of inspection results in the Vacation Rental Certificate

being denied, and the Vacation Rental is deemed not in compliance with this Section 3.30.

- d. The City of Cape Coral is also authorized to conduct spot inspections of Vacation Rentals at reasonable times, as it deems necessary, to ensure compliance with all of the provisions of this section.
- e. Once a Vacation Rental Certificate is issued, the Vacation Rental unit shall be properly maintained in accordance with the standards and requirements herein. All violations found during a spot inspection shall be corrected and re-inspected by the City within thirty (30) calendar days. Failure to correct such spot inspection deficiencies in the timeframe provided shall result in enforcement action as provided in Subsection 3.30.11 until such time as the violation(s) is/are corrected and re-inspected by the City.

.11 Violations; enforcement; revocation; notice; appeals.

a. Violations/Offenses.

- (1) A property owner's failure to comply with any of the provisions of this Section 3.30 shall constitute a violation of Section 3.30, and shall subject the property owner to the code enforcement provisions and procedures provided in Sections 2-81 through 2-96, Cape Coral Code of Ordinances.
- (2) Each day a violation exists shall constitute a separate and distinct violation.

b. Enforcement/Remedies.

- (1) Violations of this Section 3.30 shall be subject to penalties as part of an 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 registration program it is key that Vacation Rental Responsible Parties are responsive and responsible in the management of the property for compliance with this section. Any code enforcement activity pursuant to this section shall be in accordance with Chapter 162, Florida Statutes, and the Cape Coral Code of Ordinances.
- (2) Nothing contained herein shall prevent the City of Cape Coral from seeking all other available remedies which may include, but not be limited to, injunctive relief, liens, and other civil and criminal penalties as provided by law, as well as referral to other enforcing agencies.

c. Revocation. Any Vacation Rental Certificate issued pursuant to this Section 3.30 may be revoked by the Director, or designee, upon the adjudication of a violation of this section, any City of Cape Coral Ordinance, or state law by the property owner, Responsible Party, or Transient Occupant(s) attributable to the property for which the Vacation Rental Certificate is issued. The property owner shall not be entitled to a refund of the annual registration fee for a Vacation Rental Certificate for any portion of the unexpired term of a Certificate because of revocation of the Vacation Rental Certificate. Such revocation shall be in addition to any other penalty provided herein.

- (1) Prior to revoking a Vacation Rental Certificate, the Director, or designee, shall notify the property owner, in writing, of the City's Intention to Revoke a Vacation Rental Certificate, stating the reason(s) for the proposed revocation and that the property owner has ten (10) calendar days to request a hearing before the Director, or designee. A property owner may request a hearing before the Director, or designee, in writing, within ten (10) calendar days of the date of City's Intention to Revoke a Vacation Rental Certificate to dispute the initial decision.
- (2) If the property owner fails to timely request a hearing before the Director, or designee, pursuant to Subsection 3.30.11c.(1), the Director, or designee, shall provide written notice of Revocation of the Vacation Rental Certificate to the owner, stating the reason(s) for the revocation.
- (3) If the property owner timely requests a hearing before the Director, or designee, a revocation hearing shall be held within twenty-one (21) calendar days of receipt of the owner's written request.
- (4) At the revocation hearing before the Director, or designee, the property owner may provide testimony and evidence to support why the Vacation Rental Certificate should not be revoked.

- (5) In determining whether to revoke a Vacation Rental Certificate, the Director, or designee, shall consider, at a minimum, the following criteria:
 - (a) The gravity of the violation(s);
 - (b) The number of violations occurring at the Vacation Rental;
 - (c) Any violations at other Vacation Rental units owned by the same property owner; and
 - (d) Any actions taken by the property owner to prevent, mitigate, or correct the violations.
- (6) After the revocation hearing, if the Director, or designee, decides that the Vacation Rental Certificate shall be revoked, the Director, or designee, shall provide written notice of Revocation of the Vacation Rental Certificate to the owner, stating the reason(s) for the revocation.
- (7) In the event that a Vacation Rental Certificate is revoked, the property owner of the Vacation Rental subject to the revocation shall be prohibited from being issued another Vacation Rental Certificate from the City for that same dwelling unit for a period of six (6) months after the revocation of the Certificate.

d. Notice. Any notice required under this Section 3.30 shall be provided to the property owner as provided in Section 2-85, Cape Coral Code of Ordinances.

e. Appeals. Any decision of the Director, or designee, relating to the granting, denial, renewal, or revocation of a Vacation Rental Certificate under this section shall be rendered in writing. An applicant may request an appeal of the Director's, or designee's, decision to the City Manager by written notice to the City Manager within ten (10) calendar days after such decision is rendered. The City Manager shall schedule the appeal for review by the City Manager, or designee. An appeal to the City Manager pursuant to this Section 3.30 shall stay the Director's, or designee's, decision pending such appeal. The City Manager, or designee, shall consider, at a minimum, the criteria provided in Subsection 3.30.11c.(5) when deciding whether to uphold the decision of the Director, or designee. The decision of the City Manager, or designee, shall be rendered in writing.

An applicant may request an appeal of the City Manager's, or designee's, decision to the City Council by written notice to the City Clerk within ten (10) calendar days after such decision is rendered. The City Clerk shall place the appeal on the agenda of an upcoming meeting of the City Council for review. An appeal to the City Council pursuant to this Section 3.30 shall stay the City Manager's, or designee's, decision pending such appeal. The City Council shall consider, at a minimum, the criteria provided in Subsection 3.30.11c.(5) when deciding whether to uphold the decision of the City Manager, or designee. The decision of the City Council shall be final. The final decision of the City Council may be reviewed as permitted pursuant to Florida law.

.12 Rental agreement vesting. It is recognized that there are likely existing rental/lease agreements for Vacation Rentals at the time of adoption of these Vacation Rental regulations, which may not be in compliance with the terms of Section 3.30. Rental/lease agreements that were entered into prior to the date of adoption of these regulations 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 Vacation Rental Certificate process.

Notwithstanding any provision to the contrary in this Section 3.30, a person may rent or lease and allow another person to occupy a Residential Property or dwelling unit as a Vacation Rental without the issuance of a Vacation Rental Certificate from the City if:

- a. The Residential Property or dwelling unit has a current and active license as a transient public lodging establishment issued by the Florida Department of Business and Professional Regulation prior to the date of adoption of these regulations by the City Council; and
- b. A Vacation Rental registration application has been completed and submitted to the City pursuant to Section 3.30, and all applicable fees have been paid; and
- c. Said occupancy was scheduled prior to the date of adoption of these regulations by the City Council, as evidenced by a written and validly executed rental/lease agreement provided to the Director, or designee. Any such agreement for occupancy shall be provided to the City by October 1, 2017. In the event that an existing rental/lease agreement is not timely provided to the Director, or designee, a property owner shall waive any vested benefit pursuant to this section for that Vacation Rental unit.

SECTION 14. The City of Cape Coral Land Use and Development Regulations, Article XI, Section 11.1, is hereby amended as follows:

§ 11.1 Definitions.

Unless the context clearly indicates a different meaning, the following definitions shall be used to interpret the provisions of these Land Use and Development Regulations.

Words whose meanings are self-evident as used in this ordinance are not defined here. Words used in the present tense shall include the future; the singular includes the plural, and vice versa.

The word "shall" is mandatory; the word "may" is permissive. The word "includes" shall not limit a term to the specific examples, but is intended to extend its meaning to all other instances or circumstances of like kind or character. The terms "land use" and "use of land" shall be deemed also to include building or structure use and use of building or structure.

...

DWELLING UNIT. A room or rooms connected together, which could constitute a separate, independent housekeeping establishment for a family, for owner occupancy, or for rental or lease on a weekly, monthly, or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure. **DWELLING UNITS** must contain at a minimum one sleeping room, one bathroom, and one kitchen, but shall not contain more than one kitchen, or other indoor portion of the structure with a functioning range or oven. The term **DWELLING UNIT** shall not include rooms in hotels, motels or institutional facilities. Vacation Rentals, as defined in Section 3.30, shall not be subject to the rental or lease duration restrictions provided herein.

...

SECTION 15. The City of Cape Coral Code of Ordinances, Chapter 11, Article I, Section 11-16, is hereby amended to read as follows:

§ 11-16 Schedule of business taxes.

The various businesses, professions and occupations within the City of Cape Coral, Florida, are hereby classified for the purpose of this chapter and assessments of business taxes therefor fixed as follows:

	<i>Business</i>	<i>License Tax</i>
(1)	ABSTRACT COMPANY	\$110.00
...
(725)	UNCLASSIFIED, every business or occupation for which no business tax has been ordained and is not specifically designated shall pay a business tax under this classification	55.00
(731)	<u>VACATION RENTAL (state license required)</u>	<u>77.00</u>
(737)	VETERINARIAN (state license required)	55.00
...

SECTION 16. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 17. Effective Date. This ordinance shall become effective on July 1, 2017.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:


SAWICKI _____
BURCH _____
CARIOSCIA _____
STOUT _____

LEON _____
ERBRICK _____
WILLIAMS _____
COSDEN _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2017.

REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:



JOHN E. NACLERIO, III
ASSISTANT CITY ATTORNEY
ord/Vacation Rentals
4/5/17