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City of Plantation  
City Hall

**Subject:**

Continued Public Hearing and First Reading of an ordinance of the City of Plantation pertaining to the subject of Vacation Rentals

**Summary:**

CONTINUED PUBLIC HEARING AND FIRST READING OF AN ORDINANCE OF THE CITY OF PLANTATION, FLORIDA PERTAINING TO THE SUBJECT OF VACATION RENTALS, AMENDING THE CODE TO ADD REGULATIONS PERTAINING TO VACATION RENTALS; MAKING FINDINGS OF FACTS; PROVIDING A STRUCTURE FOR THE REGULATION OF VACATION RENTALS; PROVIDING FOR ENFORCEMENT; PROVIDING FRAMEWORK FOR REGISTRATION; REQUIRING INSPECTIONS; PROVIDING REQUIREMENTS FOR OCCUPANCY; PROVIDING FOR GENERAL REGULATIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE THEREFOR.

**ATTACHMENTS:**

<b>Description</b>	<b>Upload Date</b>	<b>Type</b>
Memorandum	1/17/2019	Cover Memo
Ordinance	1/17/2019	Ordinance
Exhibit	1/17/2019	Exhibit



**Planning, Zoning & Economic Development  
Memorandum**

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DATE: January 23, 2019

TO: The Honorable Mayor and Members of the City Council

FROM: Danny A. Holmes, AICP, Director

SUBJECT: Ordinance Amending Chapter 14, Article V of the Code of Ordinances to Establish Regulations for Short Term Vacation Rentals – 1<sup>st</sup> Reading

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**RECOMMENDATION:**

This Ordinance is presented for your review and approval.

**BACKGROUND:**

The purpose of the attached Ordinance is to provide reasonable guidelines for short-term vacation rentals in order to mitigate the possible negative impacts to health, safety, and general welfare to the community.

As you may recall, at the May 17, 2018 City Council meeting, the City Council directed staff to draft an ordinance to provide reasonable guidelines for the regulation of short-term vacation rentals. The impetus for the ordinance was to address the increasing complaints from residents regarding the growing use of dwelling units as short-term vacation rentals. The complaints have described short-term vacation rentals as fostering an environment for noise, parking issues, sanitary issues and certain types of criminal activities. Based on that direction, staff has prepared an ordinance to regulate the use of short-term vacation rentals in the City. It is important to note that the City has no authority to ban or regulate the frequency of short-term rentals under Florida law. Therefore, this Ordinance seeks to balance the interests of residents who are negatively impacted by short-term rentals and rights of property owners to lease their dwelling units for compensation. Essentially, a short-term rental registration is required to rent short-term rentals in the City under the proposed Ordinance.

This Ordinance was reviewed at the City Council Workshop meeting held on December 19, 2018. It is scheduled for public hearing with the Planning and Zoning Board for February 5, 2019. Following review and recommendation by the Planning and Zoning Board, it will be presented to the City Council for second reading.

Attach:

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**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANTATION,**  
**IDA:**

**Division 1. IN GENERAL**

This Article is enacted under the home rule power of the City of Plantation in the interest of the health, peace, safety and general welfare.

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

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

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

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50           Prior to 2011, the City zoning code defined a "family" for purposes of its residential zoning in a  
51           manner that restricted to three (3) the number of "unrelated" persons who could reside in a  
52           dwelling unit which enjoyed residential zoning. In enacting the provisions of this Article, the  
53           City is in part liberalizing its regulation and increasing the number of unrelated persons which  
54           could be transient occupants of vacation rental dwelling units, in light of the apparent policy  
55           interests furthered by Chapter 2014-71, Laws of Florida, and in light of the regulation of other  
56           municipalities on this subject.

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58           This Article does not prohibit vacation rentals, or regulate the duration or frequency of  
59           vacation rentals, rather this Article is intended to address life safety and compatibility concerns  
60           in the interests of the health, peace, safety, and general welfare.

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62           **Sec. 14-201. - Findings of facts.**

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64           Based on information presented at various city council meetings, information from the  
65           U.S. Census, and the Short-Term Rental Housing Restrictions White Paper, prepared by  
66           Robinson & Cole, LLP, Attorneys at Law, in 2011, prepared for the National Association of  
67           Realtors, the city council finds:

- 68  
69           (1)       Residents residing within their residential dwellings are inherently familiar with  
70           the local surroundings, local weather disturbances, local hurricane evacuation  
71           plans, and means of egress from their residential dwellings, thereby minimizing  
72           potential risks to themselves and their families.  
73  
74           (2)       In contrast, there are increased risks that transient occupants of vacation rentals,  
75           due to their transient nature, may not be as familiar with such as local  
76           surroundings, local weather disturbances, local hurricane evacuation plans, and  
77           means of egress from the vacation rentals in which they are staying, thereby  
78           increasing potential risks, and creating potential increased burdens on, and  
79           potentially putting at risk, emergency personnel in the event of an emergency  
80           situation.  
81  
82           (3)       According to the 2012-16 U.S. Census estimates, the City of Plantation has an  
83           average household size of 2.69 persons.

- (4) According to the 2010 U.S. Census, the City of Plantation has an average family size of 2.2 persons.
- (5) Vacation rentals which have occupancies significantly in excess of the historical norms experienced in Plantation can create negative impacts within residential neighborhoods due to increased noise, additional needs for off-street parking, increased traffic, and increased potential for impacts on public services.
- (6) Vacation rentals situated within residential neighborhoods, if left unregulated, can disturb the quiet nature and atmosphere of the residential neighborhoods, and the quiet enjoyment of its residents.
- (7) A residential dwelling is typically the single largest investment a family will make with the residents of the residential dwelling desiring tranquility and peaceful enjoyment of their neighborhood.
- (8) Under the City's pre-2011 regulatory scheme, a residential dwelling unit could be rented to three (3) or more transients (as defined herein) who are all "related" (as contemplated by the definition of "Family" in Sec. 27-1 of this Code), and, the numerical occupancy limits of this Article are intended to create additional practical and compatible limits to such transient occupancy that promote the public interest and improve the City's regulatory scheme. By the same token, in the pre-2011 regulatory scheme when all transients are not "related", as applied to the context of vacation rentals and in light of the additional regulation of this Article and State law, it is perceived as too restrictive.
- (9) The presence of on-site management may assist in mitigating the negative impacts of vacation rentals.

#### **Sec. 14-202. - Definitions.**

Except as expressly provided otherwise, the terms defined in Chapter 509, Florida Statutes, shall enjoy the same definition in this Article. The following terms as used in this Article are defined as set forth hereinafter:

*Bedroom* means any room in a vacation rental which has a bed or other place for sleeping with a closet that is an integral part of the permanent construction within the bedroom or with an in-suite bathroom, and which complies with the Florida Fire Code and Florida Life Safety Code requirements for a bedroom. A bathroom, a kitchen, a dining room, or a main living area. If a room has been added, altered, or converted without any required building permit having been granted, such room shall not be deemed a bedroom.

*Occupant(s)* means any person who pays to occupy a vacation rental overnight. There is a rebuttable presumption that all individuals who are not the family, as defined in Section 27-1 of the City Code, of the vacation rental owner are occupants as defined herein. The presumption may only be overcome by clear and convincing evidence presented by the vacation rental owner.

On-site management means an office located at the site of a transient public lodging establishment that has, no less than eight (8) hours per day, seven (7) days a week, a person or persons physically present on site for purposes of supplying management, rental, and/or maintenance services for that particular transient public lodging establishment, and, when the office is closed, has a person who is available upon one (1) hour's phone notice to return to the transient public lodging establishment to supply management or maintenance services.

Overnight means the time period from 10:00 p.m. until 7:00 a.m. the following day.

Vacation rental means 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 which (i) is rented to transients more than three 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 transients; and (ii) is also a transient public lodging establishment as defined in Chapter 509, Florida Statutes, but is not a timeshare project regulated by Chapter 721, Florida Statutes.

Vacation rental owner is the fee simple owner of the real property which is used as a vacation rental, whether such owner is an individual, partnership, corporation, limited liability company, trust, or other entity.

#### **Sec. 14-203. – Enforcement, Penalties, and Revocation.**

- (a) Violations of this Article may be enforced in accordance with the provisions of Chapter 6, Code Enforcement of this Code of Ordinances.
- (b) In the event the City chooses to use the Supplemental Code Enforcement Procedures set forth in Article II of Chapter 6 of this Code, the first Civil Violation Ticket shall bear a fine in an amount of Two Hundred Dollars (\$200.00) if uncontested or Three Hundred Dollars (\$300.00) if contested. For repeat Civil Violation Tickets, the first shall be Four Hundred Dollars (\$400.00) if uncontested or Five Hundred Dollars (\$500.00) if contested.
- (c) The City may also seek to enforce the provisions of this Article using any other means available to a Florida municipal corporation in enforcing local law, including those means set forth in Sections 1-13, 1-14 and 21-80 et. seq. of this Code.
- (d) Any certificate of compliance issued pursuant to this article may be denied, revoked, or suspended by the Director of Planning Zoning and Economic Development upon the adjudication by the City's Special Magistrate or a court of competent jurisdiction of a violation of this article, any city ordinance, or state law by the vacation rental owner for which the certificate of compliance is issued. Such denial, revocation or suspension is in addition to any penalty provided herein.

(e) Suspension of vacation rental certificate of compliance. In addition to any fines and any other remedies described herein or provided for by law, a City Special Magistrate or court of competent jurisdiction may suspend a vacation rental certificate of compliance in accordance with the following:

(1) Suspension time frames.

a. Upon a third violation of this article the vacation rental certificate may be suspended for a period of up to one hundred eighty (180) calendar days.

b. Upon a fourth violation of this article the vacation rental certificate may be suspended for a period of up to three hundred sixty-five (365) calendar days.

c. For each additional violation of this article the vacation rental certificate may be suspended for an additional thirty (30) calendar days up to a maximum period of twelve (12) months. For example, the fifth violation may be for three hundred ninety-five (395) calendar days; the sixth violation may be for four hundred fifteen (415) calendar days, and so on.

d. A vacation rental certificate of compliance shall be subject to temporary suspension beginning five (5) working days after a citation is issued for a violation of the Florida Building Code, or Florida Fire Prevention Code. Such suspension shall remain in place until the vacation rental is re-inspected and it is determined that the violation no longer exists by the City.

(2) Suspension restrictions. A vacation rental may not have occupants, as defined herein, during any period of suspension of a vacation rental certificate.

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

i. At the end of the current vacation rental lease period; or

ii. Within thirty (30) calendar days, whichever date commences earlier, or as otherwise determined by the special magistrate or court of competent jurisdiction.

b. Operation during any period of suspension shall be deemed a violation pursuant to this article and may be subject to daily fine, up to Five Hundred Dollars (\$500.00) or to the maximum amount as otherwise provided in Florida Statutes for repeat violations, for each day that the vacation rental operates during a period of violation.

c. An application for a renewal may be submitted during the period of suspension; however, no certificate of compliance may be issued for the vacation rental until the period of suspension has expired.



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226 **Sec. 14-204. - Construction of Article.**

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228 This Article shall be liberally construed to accomplish its purpose of regulating vacation  
229 rentals, protecting the residential character of Plantation, the health, safety, and general welfare  
230 of its residents and visitors, and the quiet enjoyment by Plantation's residents of their residential  
231 property.

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233 **Sec. 14-205. - Severability.**

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235 In the event that any word(s), phrase(s), portion(s), sub-sub-section(s), sub-section(s), or  
236 section(s) of this Article, is contrary to law, or against public policy, or shall for any reason  
237 whatsoever held to be invalid, illegal or unconstitutional, by any court of competent jurisdiction,  
238 such word(s), phrase(s), portion(s), sub-sub-section(s), sub-section(s), or section(s) of this  
239 Article shall be null and void, and shall be deemed severed, and a separate, distinct, and  
240 independent provision from the remaining provisions of this Article, and such holding shall in  
241 no manner affect the validity of the remaining words, phrases, portions, sub-sub-sections, sub-  
242 sections, or sections of this Article, which shall remain in full force and effect. This Article shall  
243 be construed in a manner to accomplish, to the greatest extent legally possible, the purposes of  
244 this Article as expressed herein.

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246 **Sec. 14-206—14-210. - Reserved.**

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248 **Division 2. VACATION RENTAL REGISTRATION**

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250 **Sec. 14-211. - Registration required.**

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252 (a) The operation of a vacation rental without registration and certificate of  
253 compliance after January 1, 2019 shall be a violation of this Article, except in the  
254 instance of providing accommodations to fulfill a pre-existing contract as  
255 provided hereinafter. Every day of such operation without registration and  
256 certificate of compliance shall constitute a separate violation. A property may be  
257 offered as a vacation rental immediately upon submission of a completed  
258 application, unless and until such time as the application is thereafter rejected for  
259 failure to pass inspection.

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261 **Sec. 14-212. - Vacation rental registration.**

- 262  
263 (a) A vacation rental owner or agent, as applicable, registering a vacation rental with  
264 the city shall submit to the city a completed application form, utilizing a form  
265 promulgated by the city, together with a non-refundable registration fee of Three  
266 Hundred and Fifty Dollars (\$350.00) or late registration fee of Four Hundred



Dollars (\$400.00) per dwelling unit. This fee shall be subject to adjustment as provided in Sec. 2-421 of this Code.

(b) A registration application form shall include the following submittals:

- (1) A completed application form which shall be submitted under oath and upon penalty of perjury.
- (2) A copy of the vacation rental's current and active license as a transient public lodging establishment issued by the Florida Department of Business and Professional Regulation as required by law.
- (3) 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, if the registrant has such certificate of registration.
- (4) Evidence of the vacation rental's current and active account with the Broward County Tax Collector for the purposes of collecting and remitting tourist development taxes and any other taxes required by law to be remitted to the Broward County Tax Collector.
- (5) Exterior site sketch. An exterior site sketch of the vacation rental facility shall be provided. The sketch shall show and identify all structures, pools, spas, hot tubs, fencing, and uses, including areas provided for off-street parking. For purposes of the sketch, off-street parking spaces shall be delineated so as to enable a fixed count of the number of spaces provided. At the option of the vacation rental owner, such sketch may be hand drawn, and need not be professionally prepared.
- (6) A copy of the most recent set of plans for the purposes of the receipt of the most recent Certificate of Occupancy for the dwelling unit proposed to be registered as a vacation rental which reflects the interior layout of the premises, supplemented by information which discloses exits, hallways, and stairways, as applicable. At the option of the vacation rental owner, in the event a copy of the most recent set of plans is not maintained by the City, a sketch is acceptable, may be hand drawn, and need not be professionally prepared.
- (7) A copy of a written notice sent by the vacation unit owner or agent to a mandatory homeowner's association or condominium/cooperative association or board, if any, that the subject property or unit will be used as a vacation rental, which notice must be sent certified mail return receipt requested, and a copy of the green receipt signed by the addressee indicating receipt of such notice.

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- 314           (8)    A calculation of the maximum number of occupants allowed in the
- 315               vacation rental in accordance with Sec. 14-246 of this Code.
- 316
- 317           (9)    The identity and contact information of the vacation rental owner, and if
- 318               an agent is designated by such owner pursuant to Subsection 14-217 (a) of
- 319               this Code, the contact information for such agent.
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- 321           (10)   A copy of the business tax receipt issued by the City Clerk, which shall be
- 322               the same as that applicable to “Rentals-Apartments....”
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- 324           (11)   A copy of the business tax receipt issued by Broward County.
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- 326           (12)   A copy of the form vacation rental lease agreement to be used when
- 327               contracting with Occupants.
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- 329       (c)    A separate registration shall be required for each vacation rental dwelling unit.
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- 331       (d)    If a registration application is incomplete, the registrant will be notified of the
- 332               deficiency, and be allowed ten (10) days to provide any missing information or
- 333               fees.
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- 335       (e)    Providing false or misleading information on a vacation rental application form
- 336               is grounds to revoke a registration, and additionally, is a violation of this Article.
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338 **Sec. 14-213. – Minimum requirements for issuance of a certificate of compliance.**

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- 340       (a)    The Director of Planning Zoning and Economic Development will issue a
- 341               certificate of compliance to the applicant upon the following:
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- 343               (1) The vacation rental owner completing the city registration application form; and
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- 345               (2) The vacation rental owner paying the non-refundable registration fee; and
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- 347               (3) The vacation rental owner submitting a business tax receipt from the City of
- 348               Plantation; and
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- 350               (4) The vacation rental owner submitting a business tax receipt from Broward
- 351               County; and
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- 353               (5) The vacation rental owner submitting a Florida Department of Revenue
- 354               certificate of registration for purposes of collecting and remitting tourist
- 355               development taxes, sales surtaxes and transient rental taxes; and
- 356
- 357               (6) The vacation rental owner submitting a Florida Department of Business and
- 358               Professional Regulation license as a transient public lodging establishment; and

(7) The vacation rental owner submitting an affidavit, demonstrating maintaining initial and ongoing compliance with vacation rental standards contained herein, plus any other applicable local, state and federal laws, regulations and standards to include, but not be limited to F.S. ch. 509, and F.A.C. 61C and 69A; and

(8) The vacation rental owner submitting a copy of the form vacation rental/lease agreement to be used when contracting with occupants; and

(9) The vacation rental owner submitting a copy of a written notice sent by the vacation unit owner or agent to a mandatory homeowner's association or condominium/cooperative association or board, if any, that the subject property or unit will be used as a vacation rental, which notice must be sent certified mail return receipt requested, via FEDEX or via UPS. The vacation rental owner must also submit a copy of the return receipt signed by the addressee indicating receipt of such notice; and

(10) The vacation rental owner submitting an exterior site sketch of the property; and

(11) That the vacation rental has satisfied the inspection requirements as provided in Division 3 of this Article; and

(12) That the vacation rental is not subject to a suspension pursuant to section 14-203.

**Sec. 14-214. - Modification of vacation rental registration.**

(a) An amendment of a vacation rental registration shall be required in the event that any of the following changes to the vacation rental are proposed:

(1) An increase in the number of bedrooms in the vacation rental.

(2) An increase in the maximum occupancy of the vacation rental.

(3) An increase or decrease in the number of parking spaces, or a change in the location of parking spaces for the vacation rental.

(4) A change in ownership of the vacation rental, or the designated agent.

(b) The fee for processing any proposed amendment shall be Fifty Dollars (\$50.00). This fee shall be subject to adjustment as provided in Sec. 2-421 of this Code.

**Sec. 14-215. - Duration of vacation rental registration and certificates of compliance.**

A vacation rental registration for which a certificate of compliance has been issued shall be valid for one (1) year after the date of registration, and all registrations and certificates of compliance shall expire on September 30th of each year.

**Sec. 14-216. - Renewal of vacation rental registration.**

The application for renewal together with the Two Hundred Fifty Dollars (250.00) renewal fee must be submitted no later than sixty (60) days prior to the September 30th expiration date. For late renewals, the fee shall be Three Hundred Dollars (300.00) and shall be charged to an application for renewal submitted prior to the expiration date but after the sixty (60) days required by this section. All applications for renewal received after September 30th shall be processed as a new application and subject to all applicable fees. All registrations for which certificates of compliance were issued within one hundred eighty (180) days prior to September 30th shall remain valid and shall not expire until September 30th of the following year.

**Sec. 14-217. - Inspection of vacation rentals.**

- (a) Inspection of a vacation rental to verify compliance with the Florida Building Code, and the Florida Fire and Life Safety Codes, shall be conducted by the city upon registration of the vacation rental, and annually after each renewal. If instances of noncompliance are found, all such instances of noncompliance shall be handled as other violations of the Florida Building Code and Florida Fire and Life Safety Codes are otherwise handled in the city.
- (b) Annual inspections shall be made by the city through appointment with the vacation rental owner or agent, as applicable. If a city inspector has made an appointment with the vacation rental owner or agent, as applicable, for an inspection, and the city inspector is unable to complete the inspection as a result of an action or inaction of the vacation rental owner or agent, or an occupant of the vacation rental, the vacation rental owner shall be charged a "re-inspection" fee. The re-inspection fee shall be paid prior to scheduling the re-inspection. In addition, failure of a vacation rental owner or agent, as applicable, to make the vacation rental available for an inspection within twenty (20) days after notification by the city in writing that the city is ready to conduct the annual inspection, shall be a violation of this Article. Each day that such violation continues shall be a separate violation.
- (c) The fee for the initial and annual inspection shall be One Hundred Dollars (\$100.00), however, the fee for each re-inspection shall be Two Hundred Fifty Dollars (\$250.00). These fees shall be subject to adjustment as provided in Sec. 2-421 of this Code.

**Sec. 14-218. – Agent/Transfer of vacation rental registration.**

- (a) The duties and functions of a vacation rental owner may, at the option of the vacation rental owner, be performed by an agent of the vacation rental owner.

The vacation rental owner shall be held responsible for all actions of such designated agent with respect to the applicable vacation rental.

- (b) Vacation rental registrations are transferable only when the ownership of the vacation rental is sold or otherwise transferred, and the new owner has filed a modification of the registration with the city within thirty (30) days from the date of the sale or transfer. Absent such modification of the registration, any outstanding vacation rental registration as to that vacation rental shall be null and void on the 31st day after such sale or transfer.

#### **Sec. 14-219. - Vested rights/waiver/estoppel.**

A vacation rental registration or certificate of compliance shall not be construed to establish any vested rights or entitle the registered vacation rental to any rights under the theory of estoppel. A vacation rental registration or certificate of compliance shall not be construed as a waiver of any other requirements contained within the City of Plantation City Code or Comprehensive Plan, and is not an approval of any other code requirement outside this Article. The registration of or issuance of a certificate of compliance for a vacation rental is not an approval of a use or activity that would otherwise be illegal under the Florida Statutes, the Florida Building Code, the Florida Fire Code or Life Safety Code, or in violation of the Plantation City Code or Comprehensive Plan.

#### **Sec. 14-220. - Duties of vacation rental owner.**

Every vacation rental owner or agent, as applicable, shall be available by landline or mobile telephone answered by the vacation rental owner or agent at the listed phone number 24-hours a day, seven (7) days a week to respond to police, fire or other emergency personnel requests. Otherwise, response to contact by the city's regulatory personnel shall be required only Monday through Saturday, 9:00 a.m. to 6:00 p.m. Failure of the vacation rental owner or agent, as applicable, to fulfil this duty, shall be a violation of this Article.

#### **Secs. 14-221—14-240. – Reserved.**

### **Division 3. STANDARDS AND REQUIREMENTS FOR VACATION RENTALS**

#### **Sec. 14-241. - Generally.**

The standards and requirements set forth in this Article shall apply to the rental, use, and occupancy of vacation rentals in the City of Plantation. The vacation rental owner must conduct an on-site inspection of the vacation rental at the end of each rental period to ensure continued compliance with the standards and requirements of this Article.

#### **Sec. 14-242. - Minimum safety and operational requirements.**

Vacation rentals in the City of Plantation shall meet the applicable standards under the Florida Statutes, Florida Building Code and the Florida Fire Code and Life Safety Code, and

each vacation rental must have at least one (1) telephone with the ability to call 911. Each vacation rental must have within each unit an operational smoke and carbon monoxide (CO) detection and notification system. Every smoke and carbon monoxide (CO) detection and notification system must be interconnected, hard-wired, and receive primary power from the building wiring. The smoke and carbon monoxide (CO) detection and notification system must be installed and continually maintained consistent with the requirements of Section R314, Smoke Alarms, and Section R315, Carbon Monoxide Alarms, of the Florida Building Code—Residential. Each vacation rental must have a portable, multi-purpose dry chemical 2A:10B:C fire extinguisher shall be installed, inspected and maintained in accordance with NFPA 10 on each floor/level of the unit. The fire 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.

**Sec. 14-243. –Maintenance of tax records, guest records and guest screening.**

- (a) If the vacation rental property is within a protected zone of the city established in accordance with Article III of Chapter 17 of this Code where it is unlawful for sexual offenders (“Offender”) to reside, it shall be a violation of this Article for a vacation rental owner or agent to allow any person who is an Offender as defined in Section 17-35 to occupy the vacation rental contrary to the provisions of Article III, Chapter 17 of this Code.
- (b) If the vacation rental property is within a protected zone of the city established in accordance with Article III of Chapter 17 of this Code where it is unlawful for sexual offenders (“Offender”) to reside, the vacation rental owner or agent shall screen each prospective occupant of the vacation rental through the national and state on-line databases, and in the event the name of the prospective occupant is the same as any name disclosed by such databases, obtain other information from the occupant as is necessary to determine that the prospective occupant is not the same person as is identified by the database.
- (c) The vacation rental owner must maintain a record of all occupants allowed in the vacation rental for the preceding one (1) year period. The record shall include the names, mailing addresses, and dates of stay of occupants. For vacation rentals within a protected zone of the city established in accordance with Article III of Chapter 17 of this Code, the record shall include any additional information used by the vacation rental owner or agent to screen occupants as may have been necessary in accordance with this Section. The City may request a copy of the records during the one (1) period. The records must be provided to the City within ten (10) business days of date of request from the City.
- (d) The vacation rental owner must maintain a record of sales surtaxes, transient rental taxes, and any other taxes remitted to the Florida Department of Revenue for the preceding one (1) year period. The City may request a copy of the records



during the one (1) period. The records must be provided to the City within ten (10) business days of date of request from the City.

**Sec. 14-244. - Public nuisance.** The vacation rental owner and occupants shall abide by all applicable state and local public nuisance laws and ordinances, including, but not limited to, Sections 823.05 and 823.10 of the Florida Statutes, which prohibits any place or premises 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.

**Sec. 14-245. - Swimming pool safety features.** If there is a swimming pool onsite, the vacation rental owner will ensure that the swimming pool has in place at least one (1) of the pool safety features listed in Section 515.27, Florida Statutes, (i.e., pool safety barrier, pool safety cover, pool alarm, or door latch/alarm) prior to use of the property as a vacation rental by any person under the age of six (6). The vacation rental owner will be deemed to have complied with this provision if the pool safety feature is put in place at the time that the property is turned over to any transient occupant occupying the vacation rental. This provision shall not apply to a vacation rental with a community swimming pool onsite, such as in a condominium, as determined by the Chief Administrative Officer. Compliance with this provision shall be in addition to compliance with Section Chapter 5, Article IV of this Code pertaining to swimming pool fences.

**Sec. 14-246. - Maximum occupancy/limitations/grandfathering.**

(a) Subject to an increase as a result of Subsection (c) below, the maximum occupancy of a vacation rental shall be the lesser of (1) or (2) below:

(1) The maximum number of occupants authorized to stay overnight at any vacation rental shall be limited to two (2) persons per bedroom; or

(2) A total of eight (8) occupants per vacation rental, however, in the event there is more than one building or dwelling on one (1) platted lot, the maximum occupancy shall be capped at eight (8) occupants per lot or structure, whichever is less.

(b) The maximum number of persons allowed to gather at or occupy a vacation rental shall not exceed three (3) times the maximum occupants authorized to stay overnight at that site, as shown on the registration for the vacation rental.

(c) Up to four (4) persons under thirteen (13) years of age are exempt from and shall not count toward the occupancy limits set in Subsection 14-246 (a) above.

**Sec. 2-247 – Grandfather Provision.**



- (a) A vacation rental that was used as a vacation rental as of the effective date of this Article, (January 1, 2019), may apply for the status of “grandfathered” for a period of five (5) years, so as to be relieved of the maximum occupancy limitations set forth in Paragraph 14-246 (a) (2) and Subsection 14-246 (b) above. All other requirements applicable to vacation rentals shall apply to “grandfathered” vacation rentals.
- (b) A grandfathered vacation rental shall have its maximum occupancy based upon two (2) persons per bedroom (each bedroom must meet the definition of bedroom herein) at the time of application for grandfather status. A change in the number of bedrooms at the vacation rental shall cause such vacation rental to lose its grandfathered status.
- (c) Vacation rentals that have an occupancy of eight (8) or less as determined according to Section 14-246 (a) (1) above will not require grandfathering to maintain that occupancy.
- (d) Application and Procedure for review.
- (1) The vacation rental owner, or agent, as applicable, ("grandfathering applicant"), shall complete a grandfathering application as prescribed by the city, which shall be submitted under oath and upon penalty of perjury, and provide verifiable written proof of the number of bedrooms as herein defined in the vacation rental, such proof may include but not be limited to all pre-existing rental agreements,.
- (2) The grandfathering application and supporting proof shall be submitted to city for review by city staff, and such staff shall make a written determination as to the maximum occupancy of such grandfathered vacation rental and issue a certificate of compliance.
- (3) If the city staff fails to confirm the requested occupancy level, the City of Plantation shall notify the grandfather applicant of that fact, and the occupancy level that can be approved, in writing. Within twenty (20) days after such notice, an evidentiary hearing may be requested by the grandfather applicant before the special magistrate to provide the grandfather applicant an opportunity to provide evidence and/or testimony in support of the occupancy requested. A determination by the special magistrate after such evidentiary hearing shall be final. If no hearing is requested during that time period, the occupancy level shall be set at the level determined by the city staff upon initial review.
- (4) An application for grandfathering shall be submitted, if at all, by no later than the time of registration of the vacation rental, but not later than February 1, 2019. If the city extends the date that registration is required, the deadline for the application for grandfathering shall also be extended

628 to the same extended date. If a vacation rental has been registered, but a  
629 final determination as to the occupancy level based upon grandfathering  
630 has not yet been made, such vacation rental may allow occupancy up to  
631 the occupancy requested in the grandfathering application until such time  
632 as a final determination as to occupancy has been made.

633  
634 (5) If it is reasonably determined by the city staff that any information  
635 supplied to the City of Plantation in support of an application for  
636 grandfathering was intentionally false or fraudulent, any approved  
637 grandfathering application may be revoked. If there is such a  
638 determination by city staff, the City of Plantation shall notify the  
639 grandfather applicant of that fact, and within twenty (20) days after such  
640 notice, an evidentiary hearing may be requested by the grandfather  
641 applicant before the special magistrate to provide the grandfather  
642 applicant an opportunity to provide evidence and/or testimony to show  
643 that the information supplied in support of the application for  
644 grandfathering was not intentionally false or fraudulent. The  
645 determination by the special magistrate after such evidentiary hearing  
646 shall be final. If no hearing is requested during that time period, the initial  
647 determination by the city staff shall be final.

648  
649 (6) If a vacation rental registration does not exist as to a vacation rental for  
650 a period in excess of thirteen (13) months, any grandfathering  
651 determination shall be deemed abandoned, and shall no longer be  
652 applicable to that vacation rental.  
653

654 **Sec. 14-248. - Vacation rental agreements—Minimum provisions.**

655  
656 Vacation rentals shall be rented, leased or occupied pursuant to a written rental agreement  
657 which contains, at a minimum, the following information:  
658

659 (1) Maximum occupancy of the vacation rental that is consistent with the vacation  
660 rental registration.

661  
662 (2) The maximum number of vehicles that will be allowed to park at the vacation  
663 rental. Such number of vehicles shall not exceed the number of parking spaces  
664 located at the vacation rental as shown in the sketch submitted with the vacation  
665 rental registration, plus any other legal parking spaces that the vacation rental  
666 owner can show are available to the vacation rental.

667  
668 (3) A statement that a sketch of the permitted off-street parking locations where  
669 occupants may park according to the vacation rental registration sketch and any  
670 other legal parking spaces available to the vacation rental will be posted at the  
671 vacation rental.  
672

- (4) A statement that all occupants must promptly evacuate from the vacation rental upon posting of any evacuation order issued by state or local authorities.
- (5) A copy of a document to be supplied by the city which includes excerpts from City of Plantation ordinance provisions of general application relevant to vacation rentals to include solid waste and recyclable pick-up regulations, and City of Plantation Noise Ordinance, as specified by resolution of the city, as a lease addendum. The city will make available to vacation rental owners and agents a copy of such document in digital format upon request, and the city will post such document on its website.

**Sec. 14-249. - Required providing of vacation rental and local information—Posting.**

- (a) In each vacation rental, there shall be provided, in a prominent location, the following written information:
- (1) The name, address and phone number of the vacation rental owner or agent, as applicable.
- (2) The maximum occupancy of the vacation rental.
- (3) A copy of a document to be supplied by the city which includes excerpts from City of Plantation ordinance provisions of general application relevant to vacation rentals to include solid waste and recyclable pick-up regulations, and City of Plantation Noise Ordinance, as specified by resolution of the city, as a lease addendum. The city will make available to vacation rental owners and agents a copy of such document in digital format upon request, and the city will post such document on its website.
- (4) The maximum number of vehicles that can be parked at the vacation rental, along with a sketch of the location of the off-street parking spaces.
- (5) The days and times of garbage and recyclable pickup.
- (6) The location of the nearest hospital.
- (7) A copy of the City's Business Tax Receipt.
- (8) A copy of the Certificate of Completion.
- (b) There shall be posted, next to the interior door of each bedroom a legible copy of a building evacuation map—Minimum 8½" by 11".

**Secs. 14-250—14-259. - Reserved.**

719 **Division 4. EXEMPTIONS**

720  
721 **Sec. 14-260. - Exemption for pre-existing rental agreements.**

722  
723 Notwithstanding any other provision of this Article, rental agreements with prospective  
724 occupants for vacations rentals that were pre-existing as of the enactment of this Article  
725 (\_\_\_\_\_), (hereinafter "pre-existing agreements") are exempt from the provisions of this  
726 Article.

727  
728 If a vacation rental is cited for a violation of this Article, (that would not be a violation  
729 if it were not for this Article), when the vacation rental is occupied under the terms of a pre-  
730 existing agreement, the vacation rental owner may defend such violation based on the fact that  
731 the vacation rental was exempt from this Article due to it being occupied pursuant to a pre-  
732 existing agreement. Such defense shall be determined based upon the following information, and  
733 upon any additional information supplied by the vacation rental owner or otherwise determined  
734 by the fact finder:

- 735  
736 (1) Copy of deposit or payment information evidencing that the agreement was a  
737 pre-existing agreement.  
738  
739 (2) Copy of e-mail or other communication evidencing a binding pre-existing  
740 agreement.  
741  
742 (3) Information from the occupant confirming that there was a binding agreement  
743 in a time-frame to make the agreement as pre-existing agreement under this  
744 Article."  
745

746 **Section 2.** Should any article, division, section, subsection, paragraph, sentence,  
747 clause, phrase or other part of this Chapter be declared by a court of competent jurisdiction to be  
748 invalid, such decision shall not affect the validity of this Chapter as a whole or any article, division,  
749 section, subsection, paragraph, sentence, phrase, or word thereof, other than that so declared to be  
750 invalid.

751  
752 **Section 3.** That the provisions of this Ordinance shall become and be made a part of  
753 the Code of Ordinances of the City of Plantation, Florida, that the sections of the Ordinance may  
754 be renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall  
755 be changed to "Section," "Article" or other appropriate word.

756  
757 **Section 4.** That this Ordinance shall take effect \_\_\_\_\_, 2019.

758  
759 CONSIDERED AT FIRST READING by the City Council this 10<sup>th</sup> day of October 2018.

760  
761 CONTINUED AND PASSED AT A CONTINUED FIRST READING by the City Council this  
762 24<sup>th</sup> day of October 2018.

763  
764 PASSED SECOND READING by the City Council this \_\_\_\_\_ day of \_\_\_\_\_  
765 2019.

Signed by the Mayor this \_\_\_\_\_, day of \_\_\_\_\_, 2019.

ATTEST:

\_\_\_\_\_  
Susan Slattery  
Clerk

\_\_\_\_\_  
Diane Veltri Bendekovic  
Mayor

APPROVED

DATE

REQUESTED BY: \_\_\_\_\_

DEPT. OK: \_\_\_\_\_

ADMIN. OK: \_\_\_\_\_

ATTY. OK: \_\_\_\_\_

AS TO FORM ONLY

RECORD ENTRY:

I HEREBY CERTIFY that the Original of the foregoing signed Ordinance No. \_\_\_\_\_ was received by the Office of the City Clerk and entered into the Public Record this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Susan Slattery, City Clerk

# SHORT-TERM RENTAL HOUSING RESTRICTIONS

## White Paper

PREPARED BY



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# SHORT-TERM RENTAL HOUSING RESTRICTIONS

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## **PREFACE**

This white paper on *Short-Term Rental Housing Restrictions* has been prepared by Robinson & Cole LLP in its capacity as national consultant to NAR. The paper is one in a series of white papers that NAR requests be prepared from time to time in order to focus on a particular smart growth-related issue that has arisen with sufficient frequency in communities around the country to merit a more in-depth analysis.

The analysis of short-term rental housing restrictions in this paper is provided by NAR under its Smart Growth program to help REALTORS® at the state and local level better understand the issues involved in these types of restrictions, and to tailor strategies, as appropriate, to address short-term rental housing regulatory initiatives in their communities.

Brian W. Blaesser  
**Robinson & Cole LLP**  
*September 2011*

## SECTION 1: INTRODUCTION

### 1.1 PURPOSE AND SCOPE OF PAPER

This paper was prepared at the request of the National Association of REALTORS® (NAR). The purpose of this paper is to (1) explain the problem of short-term rental housing restrictions; (2) categorize and describe the different approaches taken by local governments to regulate short-term rental housing in their communities; (3) analyze the issues raised by these different regulatory approaches; (4) provide Realtors® with ways to address these issues; and (5) outline “best practices” approaches to short-term rental housing that Realtors® can use in discussing the issue with local government officials.

### 1.2 KEY TERMS

The term “short-term rental housing” typically means a dwelling unit that is rented for a period of less than thirty consecutive days. In general, short term rental housing differs from bed & breakfasts, hotels, motels, and other “lodging” uses by providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Although bed & breakfasts often are similar in appearance and location to many short-term rentals, they are distinguishable by the presence of the owner/operator on-site.<sup>1</sup> Boarding houses differ from short-term rentals by having multiple rooms or units for rent and common kitchen and dining facilities that are shared by the occupants.<sup>2</sup> Boarding houses also tend to be less transient than short-term rentals.<sup>3</sup> Similarly, hotels and motels are distinguishable from short-term rentals by having separate entrances and an on-site management office.<sup>4</sup> In some communities, short-term rental housing may be referred to as vacation rentals, transient rentals, or resort dwelling units.

Terms that appear in **bold typeface** are defined in the Glossary found at the end of this paper.

## SECTION 2: OVERVIEW OF SHORT-TERM RENTAL RESTRICTIONS

### 2.1 PURPOSE – THE MUNICIPAL PERSPECTIVE

Many communities around the country, both vacation destination communities and non-vacation communities, have implemented some form of short-term rental housing regulation. Below is an overview of the most common reasons cited by communities for regulating short-term rental housing.

---

<sup>1</sup> See Nate Hutcheson, “Short-Term Vacation Rentals: Residential or Commercial Use?,” *Zoning News* (March 2002, American Planning Association) (hereinafter “APA Report”).

<sup>2</sup> See APA Report at 5.

<sup>3</sup> See APA Report at 5.

<sup>4</sup> See APA Report at 5.

### **2.1.1 Protection of Neighborhood Environment**

The most commonly cited municipal purpose for regulating short-term rental housing is to protect the character of existing residential neighborhoods. Often these communities are responding to complaints from permanent residents about the disturbances that may be caused by short-term tenants, including excessive noise, late night parties, trespassing, increased traffic, and other disruptive activities. Generally speaking, the rationale is that vacationers and guests who do not have ties to the local community are more concerned with maximizing their fun than they are with being a good neighbor. This rationale is evident in the “resort dwellings” ordinance adopted by the City of Venice, Florida, which states:

[The] City council finds that resort dwelling rental activities in single-family neighborhoods affects the character and stability of a residential neighborhood. The home and its intrinsic influences are the foundation of good citizenship. The intent of these regulations is to prevent the use of single-family residences for transient purposes in order to preserve the residential character of single-family neighborhoods.<sup>5</sup>

### **2.1.2 Protection of Physical Characteristics**

Some communities also cite the need to protect the physical characteristics of their residential neighborhoods. The underlying rationale is that short-term rental properties generally are not owner-occupied and therefore are less likely to be cared for to the same degree as permanent residences. At least, in theory, absentee property owners are presumed to be less diligent about the types of regular and routine maintenance tasks typically associated with home ownership, such as lawn maintenance, tree and shrub pruning, and exterior painting.

### **2.1.3 Revenue**

For many communities, particularly those with a robust tourist industry, short-term rentals represent a potentially significant source of tax revenue. In Texas, for example, the Hotel Occupancy Tax statute broadly defines the term “hotel” to include any building that offers sleeping accommodations for consideration, including a “tourist home” or “tourist house,” and imposes a six percent tax on the price paid for such accommodations.<sup>6</sup> Moreover, the Municipal Hotel Occupancy Tax statute authorizes Texas cities, towns and villages to impose and collect an additional nine percent tax on hotels, including short-term rental properties.<sup>7</sup> The potential revenue available to municipalities with authority to tax short-term rentals is exemplified by a 2011 study prepared by the city auditor for Austin, Texas, which estimated that the city could gain \$100,000 to \$300,000 annually by collecting taxes on short-term rental properties.<sup>8</sup> Communities that desire to collect such taxes may impose registration or licensing requirements as a means of identifying properties that are being used for short-term rentals and are therefore subject to taxation.

---

<sup>5</sup> Venice, FL Land Development Code § 86-151.

<sup>6</sup> See Texas Code §§ 156.001, 156.052. Accommodations of “at least 30 consecutive days, so long as there is no interruption of payment for the period,” are exempt from the tax. *Id.* § 156.101.

<sup>7</sup> See Texas Code § 351.003.

<sup>8</sup> See “City of Austin begins work on short-term rental regulations; Planning Commission to address safety, tax revenue concerns,” (Source: impactnews.com: Central Austin, April 22, 2011).

### **2.1.4 Fairer Competition with Licensed Lodging**

Short-term rental restrictions may also be viewed as a means of leveling the playing field between the short-term rental industry and competing overnight lodging uses that may be specifically regulated under state or local law, such as hotels and bed and breakfasts. In some cases, the hotel industry has lobbied for the adoption of such regulations on the grounds that short-term rentals are functionally the same as hotel units and therefore should either be taxed and regulated like hotels, or prohibited. At a June 2011 meeting of the Planning Board of Buncombe County, North Carolina, for example, several hoteliers cited unfair competition in arguing against the potential repeal of a ban on vacation rentals in the county's more restrictive residential zoning districts. One industry representative testified that hotels "spend many, many hours and many, many dollars abiding by all the regulations that [hotels] are required to abide by and that many do not apply to short-term rentals."<sup>9</sup>

### **2.1.5 Protection of Renter Safety**

A less commonly cited reason for the adoption of short-term rental regulations is the protection of renter safety. The rationale is that operational restrictions (e.g., occupancy limits based on septic system capacity) and inspection requirements are necessary to ensure the safety of occupants of short-term rental units. The City of Big Bear Lake, California, for example, has a "transient private home rentals" ordinance that is intended, in part, "to ensure . . . that minimum health and safety standards are maintained in such units to protect the visitor from unsafe or unsanitary conditions."<sup>10</sup>

## **2.2 TYPES OF SHORT-TERM RENTAL RESTRICTIONS**

### **2.2.1 Prohibition**

From the perspective of a short-term rental property owner, the most severe form of restriction is an outright ban on short-term rentals. A short-term rental prohibition may be limited to specific neighborhoods or zoning districts, or may be community-wide.

### **2.2.2 Geographically-Based Restrictions**

Communities that choose to allow short-term rentals often use their zoning authority to regulate the use on a geographic basis. For example, Venice, Florida regulates short-term rental properties (referred to locally as "resort dwellings") only in the city's Residential Estate (RE) and Residential Single Family (RSF) zoning districts.<sup>11</sup> Similarly, Maui County, Hawaii permits transient vacation rentals only within certain business zoning districts and certain designated

---

<sup>9</sup> "Buncombe planners wade into Asheville-area vacation rental issue again; County debates relaxing the rules," *The Asheville Citizen-Times*, June 6, 2011.

<sup>10</sup> City of Bear Lake, CA Municipal Code § 17.03.310(A).

<sup>11</sup> See generally Venice, FL Land Development Code § 86-151.

“destination resort areas,” including the Wailea, Makena, Kaanapali, and Kapalua Resort Areas.<sup>12</sup>

### 2.2.3 Quantitative and Operational Restrictions

Other communities that allow short-term rentals may choose to implement a cap on the number of short-term rental permits that may be issued. Such an approach constitutes a compromise between short-term rental owners who argue that they have the right to rent their properties on a short-term basis, and opponents who argue that short-term rentals should be prohibited as an unlawful commercial use in a residential neighborhood. Quantitative restrictions may take the form of a fixed limit on the total number of short-term rental permits that may be issued at any given time. The City of Santa Fe, New Mexico, for example, authorizes the Land Use Director to issue “up to 350 short term rental permits” for residential properties that do not otherwise qualify for permits as an accessory dwelling unit, owner-occupied unit, or unit located within a “development containing resort facilities.”<sup>13</sup> Similarly, the City of Cannon Beach, Oregon maintains a 92 permit cap on the number of transient rental permits that will be issued by the city.<sup>14</sup> Alternatively, a community may implement a proximity restriction that prohibits a short-term rental property from being located within a certain distance of another short-term rental property. The “Residential Vacation Rentals” ordinance of San Luis Obispo County, California, for example, provides:

[N]o residential vacation rental shall be located within 200 linear feet of a parcel on the same block on which is located any residential vacation rental or other type of visitor-servicing accommodation that is outside of the Commercial land use category.<sup>15</sup>

Another type of quantitative restriction is that in the Mendocino County, California zoning ordinance, which requires the county to maintain a ratio of “thirteen (13) long term residential dwelling units to one (1) single unit rental or vacation home rental.”<sup>16</sup>

Many short-term rental regulations incorporate performance-type standards for the operation of short-term rental properties. Below are examples of these types of standards that are frequently incorporated into short-term rental regulations:

- **Maximum Occupancy Limits:** This standard limits the maximum overnight occupancy of short-term rental properties based on the number of bedrooms in the home (for example, the Isle of Palms, South Carolina limits overnight occupancy to two persons per bedroom plus an additional two persons<sup>17</sup>) and/or on the septic capacity of the property. In Sonoma County, California, for example, the maximum overnight occupancy of a vacation rental property on a conditional septic system is “equal to the design load of the septic system.”<sup>18</sup>

---

<sup>12</sup> See Maui County, HA County Code § 19.38.030(B).

<sup>13</sup> See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(i).

<sup>14</sup> See City of Cannon Beach, OR Zoning Code § 17.77.020(F).

<sup>15</sup> San Luis Obispo County, CA Code § 23.08.165(c).

<sup>16</sup> Mendocino County, CA Code § 20.748.020(A).

<sup>17</sup> See Isle of Palms, SC City Code § 5-4-202(1).

<sup>18</sup> See Sonoma County, CA Code of Ordinances § 26-88-120(f)(2).



- Rental Period Restrictions: This restriction places a limit on the number of times a property may be rented for short-term occupancy. The City of Santa Fe, New Mexico, for example, limits short-term rental units to a maximum of 17 rental periods per calendar year and permits no more than one rental within a seven consecutive day period.<sup>19</sup>
- Parking Requirements: This standard may require that the short-term rented property provide more off-street parking than comparable properties that are occupied by owners or long-term tenants. Santa Fe also specifically prohibits short-term rental occupants from parking recreational vehicles on site or on the street.<sup>20</sup>
- Noise Level Limits: This standard applies specific noise level limitations to activities associated with short-term rental properties. Sonoma County's vacation rental ordinance, for example, includes an "Hourly Noise Metric" table that imposes specific quantitative noise level limits on vacation rentals during "activity hours" (9:00 a.m. to 10:00 a.m.) and "quiet hours" (10:00 p.m. to 9:00 a.m.).<sup>21</sup>
- Required Postings: This standard requires owners to prominently display a copy of the operational restrictions and contact information for the owner, manager, or other representative of the rental property.<sup>22</sup> Owners may also be required to incorporate the operational restrictions in all rental agreements.
- Emergency Access Requirements: If located behind a locked gate or within a gated community, short-term rental units may be required to provide a gate code or lockbox with keys to local police, fire, or emergency services departments.<sup>23</sup>
- Mandatory Designated Representatives: This standard requires that the short-term renter provide a current 24-hour working phone number of the property owner, manager, or other designated representative to local officials and to property owners within a certain distance of the rental unit. Some communities also require that the designated representative be available during all rental periods within a certain distance (e.g., a one-hour drive) of the rental property.<sup>24</sup>
- Trash and Recycling Facility Storage: This standard requires that trash and recycling bins be stored in a location that is not visible from public rights-of-way. Section 5.25.070 of the City of Palm Springs, California vacation rental ordinance, for example, states: "Trash and refuse shall not be left stored within public view, except in proper containers for the purpose of collection by the collectors and between the hours of five a.m. and eight p.m. on scheduled trash collection days."<sup>25</sup>

<sup>19</sup> See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(ii).

<sup>20</sup> See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(ii).

<sup>21</sup> See Sonoma County, CA Code of Ordinances § 26-88-120(f)(6).

<sup>22</sup> See, e.g., Venice, FL Land Development Code § 86-151(2)(b)(1).

<sup>23</sup> See, e.g., Sonoma County, CA Code of Ordinances § 26-88-120(f)(14).

<sup>24</sup> See, e.g., Sonoma County, CA Code of Ordinances § 26-88-120(f)(13).

<sup>25</sup> Palm Springs, CA Municipal Code § 5.25.070(g).

## 2.2.4 Registration/Licensing Requirements

Owners who intend to offer their property for use as a short-term rental unit may be required to register their property with the local government. Garrett County, Maryland, for example, requires owners to register their property with the Office of Licensing and Enforcement Management and to pay a one-time fee as condition precedent to receiving a “transient vacation rental unit license” from the County.<sup>26</sup> Short-term rental licenses often are valid only for a one- or two-year period, requiring property owners to renew the licenses—and to pay associated fees—on a regular basis.

Many communities require short-term rental properties to pass certain inspections prior to the issuance of a permit, license, or renewal. Tillamook County, Oregon, for example, as a condition to the issuance of a short-term rental permit, requires property owners to obtain a certification from a certified building inspector evidencing compliance with all applicable operational standards, including minimum fire extinguisher and smoke detector requirements, emergency escape and rescue standards, and structural requirements.<sup>27</sup>

## 2.3 ENFORCEMENT

Communities typically enforce their short-term rental regulations (a) in accordance with a generally applicable enforcement provision contained in the code of ordinances or zoning ordinance, or (b) through a specific enforcement provision incorporated into the short-term rental regulations. Article 9 of the Isle of Palms, South Carolina Code of Ordinances is one example of a short-term rental ordinance that contains no specific enforcement provision, but is enforced under a generally applicable penalty provision.<sup>28</sup> Under the Isle of Palms Code of Ordinances, violation of the short-term rental ordinance is subject to the same penalties and procedures as a violation of any other provision the zoning code. Potential penalties for a violation are established under Section 5-4-7 of the Code of Ordinances, which states:

In case a structure or land is or is proposed to be used in violation of this chapter, the Zoning Administrator may, in addition to other remedies, issue and serve upon a person pursuing such activity or activities a *stop order* requiring that such person immediately cease all activities in violation of this chapter.

Any person violating any of the provisions of this chapter shall be deemed guilty of a *misdemeanor* and shall for each violation, upon conviction thereof, be punished as provided in section 1-3-66. Each day that a violation continues shall constitute a separate offense.<sup>29</sup>

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<sup>26</sup> See Garrett County, MD Code of Ordinances § 160.03(A).

<sup>27</sup> See Tillamook County (OR) Short Term Rental Ordinances, Sections 6 (Standards) and 9.A.b (Short Term Rental Permit Application Requirements).

<sup>28</sup> See generally Isle of Palms, SC City Code §§ 5-4-201 to -206 (Short-Term Rentals) and § 5-4-7 (Violations and Penalties).

<sup>29</sup> Isle of Palms, SC City Code § 5-4-7 (Emphasis added).

By contrast, the short-term rental ordinances of Sonoma County, California and Santa Fe, New Mexico contain specifically applicable enforcement provisions. Under Section 26-88-120(g) of the Sonoma County vacation rental ordinance, individuals who register an initial complaint about a vacation rental property are directed to the contact person identified in the zoning permit or use permit issued for the property. Subsequent complaints are addressed to code enforcement officials who are responsible for conducting an investigation to determine whether there was a violation of a zoning or use permit condition. Code enforcement may accept neighbor documentation consisting of photos, sound recordings and video as proof of an alleged violation. If code enforcement verifies that a violation has occurred, then a notice of violation is issued and a penalty may be imposed in accordance with Chapter 1 of the Sonoma County Code. In addition, under Section 26-88-120(g)(1), code enforcement officers are also given the discretion to schedule a revocation hearing with the board of zoning adjustment. If a vacation rental permit is revoked, then a new zoning or use permit for a vacation rental may not be reapplied for or issued for a period of at least one year.<sup>30</sup> Santa Fe's short term rental unit ordinance includes a specific provision that authorizes the city to revoke a short term rental permit upon conviction for a third violation of the ordinance.<sup>31</sup>

## **SECTION 3: IMPACTS OF SHORT-TERM RENTAL RESTRICTIONS**

### **3.1 IMPACTS ON RENTAL PROPERTY OWNERS**

#### **3.1.1 Rental Income**

For some rental property owners, the adoption of short-term rental restrictions may result in the *loss* of rental income altogether. The most obvious example is an owner of property located in a zoning district where short-term rentals are no longer allowed under a local ordinance. In areas where short-term rentals are allowed, other property owners might face the loss of rental income due to their inability, for financial or other reasons, to satisfy the requirements for obtaining a permit, such as minimum off-street parking or structural requirements. As discussed in Section 5.3.6 below, some short-term rental regulations might also cause an owner to lose rental income because of suspension or revocation of a rental permit, even if the reason for suspension or revocation is beyond the owner's control (e.g., tenant behavior).

There are several ways in which a short-term rental restriction might also result in a *decrease* in rental income. An ordinance that restricts the number of times a property may be rented per year could have a significant impact on the property's income potential. Santa Fe, New Mexico, for example, limits short-term rentals to 17 rental periods per year.<sup>32</sup> A maximum overnight occupancy provision could also negatively affect the income potential of a rental property by reducing the number of guests to whom a home may be rented. Rental restrictions can also cause a reduction in rental income where they have the effect of narrowing the field of potential tenants or discouraging vacationers from renting a home. For example, an ordinance that prohibits

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<sup>30</sup> See generally Sonoma County, CA Code of Ordinances § 26-88-120(g).

<sup>31</sup> See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(iv).

<sup>32</sup> See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(ii)(B).

short-term occupants from parking a recreational vehicle on site or on the street might deter families who travel by RV from renting a home in Santa Fe.<sup>33</sup>

### 3.1.2 Property Values

Short-term rental restrictions can affect property values in different ways. Generally speaking, all else being equal, if identified negative impacts of short-term rentals in a district or neighborhood are reduced or eliminated by short-term rental housing restrictions, property values may increase. On the other hand, the added limitations on the use of properties that short-term rental housing restrictions impose may cause property values in the district or neighborhood to decrease. The precise impact that short-term rental restrictions have on property values will depend on various factors, including the general character of the community (e.g., vacation destination versus non-destination community), the precise terms of the ordinance, local and national economic conditions, and local real estate market conditions.

#### 3.1.2.1 Existing Short-Term Rental Properties

In general, the value of a home that was used as a short-term rental prior to the adoption of restrictions, but is either prohibited or restricted from future use as a short-term rental, can be expected to *decrease*. That is particularly true in vacation destination communities, where homeowners often purchase second homes as investment properties.<sup>34</sup> These potential buyers often plan to use the second home as a short-term rental property until they retire or otherwise become able to maintain the property as their full-time residence.<sup>35</sup> Such buyers would tend to be less interested in purchasing in an area where the short-term rental market is highly uncertain or is constrained by burdensome regulations.

In some circumstances, it is conceivable that a short-term rental ordinance could increase the value of those homes that were used as short-term rentals prior to the adoption of the restrictions *and* become lawfully licensed for use under the new regulations. Under the general economic principle of supply and demand, if an ordinance has the effect of reducing the *supply* of short-term rental properties and the *demand* for short-term rental properties rises or remains constant, then the value of individual properties licensed as short-term rental properties after the adoption of regulations, can be expected to rise.

#### 3.1.2.2 Properties Not Previously Used as Short-Term Rental Properties

The impact of short-term rental restrictions on the value of properties that were not used as short-term rentals prior to adoption of the restrictions will also vary. The value of a property that becomes licensed as a short-term rental for the first time under a new ordinance conceivably could *increase* if the quantity of short-term rental properties on the market falls as a result of the

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<sup>33</sup> Section 14-6.2(A)(6)(a)(ii)(E) of the Santa Fe Short Term Rental Ordinance states: “Occupants shall not park recreational vehicles on site or on the street.”

<sup>34</sup> See National Association of Realtors®, *Nearly One in Seven Homebuyers Owned or Bought A Second Home During First Quarter*, July 13, 2003 (accessed at <http://www.realtor.org/publicaffairsweb.nsf/Pages/SecondHomeReport?OpenDocument>).

<sup>35</sup> See *id.*

ordinance. In residential neighborhoods where the existence of short-term rentals is considered a negative, an ordinance that prohibits future short-term rental activity in those neighborhoods could positively affect the value of homes in these locations.

### **3.1.3 Operational Costs**

Short-term rental regulations tend to increase the cost of owning and operating a rental property in a number of ways. The regulations typically require owners to pay an up-front registration or permit fee and may also require payment of additional licensing fees on an annual or other recurring basis. Inspection requirements also add to the cost of operating a short-term rental since, in most cases, the inspections are performed at the owner's expense. Performance standards may also require an owner to undertake costly improvements in order to obtain a short-term rental permit. An owner may be required to expand an existing driveway in order to satisfy a minimum parking requirement or to upgrade electrical or sewer systems in order to qualify for a permit. In addition, a rental property owner who resides out of state may have to hire a property manager in order to satisfy a requirement that a designated representative be available at all times and within a certain proximity of the unit during any rental period.

### **3.1.4 Nonconforming Use Status**

A property that was used as a short-term rental prior to the adoption of an ordinance that no longer allows short-term rentals may become a **nonconforming use** under state and local zoning laws. Although state and local zoning laws typically allow nonconforming uses to continue, the right to alter or expand a nonconforming use is usually limited and often requires the issuance of a special permit, or an equivalent form of zoning relief, from the local planning commission or board of appeals. In addition, a nonconforming use that is discontinued for a specific period of time (typically one or two years) may be deemed abandoned, and thereafter prohibited from resuming at a future date.

## **3.2 COMMUNITY IMPACTS**

### **3.2.1 Local Real Estate Market**

In vacation destination communities, many property owners depend on the income gained from short-term rentals to pay their mortgages, real estate taxes, association dues, and other expenses. If that income is taken away or severely reduced by short-term rental restrictions, the only alternative for those homeowners might be to sell their homes immediately in order to avoid foreclosure or a distressed sale. A widespread ban on short-term rentals that results in a substantial number of homes being sold or foreclosed upon may flood the market, causing property values to fall and remain depressed for a period of time.

### **3.2.2 Tourism**

Short-term rental restrictions may negatively impact local tourism in at least two ways. First, they may affect the occupancy rates of vacation rentals by increasing the per-person cost of short-term rentals because they limit the maximum occupancy of a short-term rental unit. Short-

term rental restrictions may also cause rental property owners to increase their rental rates and minimum security deposits in order to cover the increased cost of operating a short-term rental and the risk of incurring a fine or having their rental licenses revoked or suspended. All else being equal, the higher rental rates paid by smaller groups of tenants, increase the per-person cost of short-term rentals in communities with short-term rental ordinances.

Second, tourists who become aware of the new restrictions may perceive them as being motivated by, and evidence of, an “anti-tourist” sentiment among full time residents of the community. Regulations that single out short-term rentals for different treatment may implicitly brand short-term renters as being potentially disruptive even though an individual tenant may have done nothing wrong. Provisions that allow random inspections of short-term rentals without imposing reasonable restrictions on the time or manner of those inspections may be perceived as an invasion of privacy and an unreasonable disruption of a family vacation. A perceived anti-tourist sentiment may ultimately discourage tourists from vacationing in that community.

A January 2010 report prepared by the Napa Valley Vacation Rental Alliance, argued that the availability of short-term rental properties could determine where a family or groups of friends vacationing together chooses to stay. The report states:

Throughout the world, some travelers prefer private dwellings to hotels. For instance, those traveling as a family or group of friends often want spacious accommodations and kitchens. This market segment will not substitute conventional lodging if vacation rentals are not provided, they will simply go elsewhere. Thus, by eliminating vacation rentals, Napa County would deter a substantial number of visitors who currently spend on restaurants, wine, attractions and services and who would instead spend for leisure outside our County.<sup>36</sup>

The 2008 study “Economic Impact of Transient Vacation Rentals (TVRs) on Maui County”<sup>37</sup> commissioned by the Realtors<sup>®</sup> Association of Maui (the “Maui TVR Study”) reached a similar conclusion. Acknowledging that “the TVR industry is concerned about . . . the potential enactment of legislation meant to marginalize [the TVR] industry, and the potential economic consequences of such policies,” the Maui TVR Study concluded:

The extent of the loss of the TVR industry due to government regulations depends to what extent TVR visitors substitute an alternative Maui County accommodation type to TVRs if they are unavailable or not sufficiently available to meet the current and expected future demand level for their accommodation type. In a global market place with alternatives to Maui destinations offering a literal potpourri of accommodation experiences, the modern, well-informed and sophisticated visitor can find the accommodations experience that best fits their tastes and preferences.

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<sup>36</sup> Napa Valley Vacation Rental Alliance (NVVRA): A Coalition of Napa County Stakeholders (prepared for Napa County by Napa Valley Vacation Rental Alliance (NVVRA), Jan. 2010) (available on-line at <http://www.white.com/nvvra/media/WHY%20CODIFYING%20VACATION%20RENTALS%20NOW%20IS%20GOOD%20PUBLIC%20POLICY.pdf>).

<sup>37</sup> “Economic Impact of Transient Vacation Rentals (TVRs) on Maui County,” prepared by Dr. Thomas Loudat & Dr. Prahlad Kasturi for the Realtors<sup>®</sup> Association of Maui (Jan. 8, 2008) (hereinafter the “Maui TVR Study”).

Based on the increasing market share of TVRs on Maui from 2000 to 2006 relative to other accommodation types one can reasonably surmise that the modern visitor increasingly prefers a TVR or its equivalent experience. Thus, even though elimination of Maui TVRs may not result in the loss of all TVR visitors who may substitute an alternative Maui County accommodation type yet available, we would still expect a significantly negative economic impact in Maui County if TVRs are eliminated or significantly reduced.<sup>38</sup>

### **3.2.3 Local Economy**

Local economies that lean heavily on the tourist economy are more susceptible to the potential impacts of short-term rental restrictions. Even a slight impact on tourism in these communities can have a significant negative effect on the viability and success of restaurants, retail establishments, and other local businesses that provide services to tourists. The potential dollar impacts of a reduction in visitor numbers due to a short-term rental restriction is illustrated by the daily spending calculations of the Maui TVR Study, which calculated that transient vacation rental visitors spent an average of \$159.16 per day in Maui County.<sup>39</sup> Based on 2006 transient vacation rental visitor data (105,967) and a 6.85 day average length of stay, the study concluded that transient vacation rentals produced more than \$115 million in total revenue from lodging, food and beverage, entertainment, shopping, and other county businesses and services.<sup>40</sup>

### **3.2.4 Tax Revenue**

Short-term rental restrictions can have a positive effect on tax revenue if communities are authorized by state law to impose and collect a tax on short-term rentals. Cities, towns and villages in Texas, for example, are authorized by the Municipal Hotel Occupancy Tax statute to impose and collect a nine percent tax on the price paid for short-term rentals.<sup>41</sup> In 2011, the City of Austin estimated that it could gain an additional \$100,000 to \$300,000 in tax revenue by taxing short-term rental properties.<sup>42</sup>

At the same time, however, short-term rental restrictions that negatively affect local tourism could cause sales tax revenue to decrease if restaurant and retail sales are down due to diminished tourism.

### **3.2.5 Affordable Housing**

Short-term rentals can affect housing costs in a community. When property owners elect to rent their homes on a short-term basis rather than renting on a longer-term basis (e.g., by the season or by the year), “they essentially squeeze the supply of housing, pushing up the demand, and subsequently, the cost” of housing in the community.<sup>43</sup> In some cases, allowing short-term rentals may fuel speculation in rising housing markets by allowing investors to cover the

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<sup>38</sup> Maui TVR Study at 1-2.

<sup>39</sup> See Maui TVR Study at 16.

<sup>40</sup> See Maui TVR Study at 16-17

<sup>41</sup> See Texas Code § 351.003.

<sup>42</sup> See “City of Austin begins work on short-term rental regulations; Planning Commission to address safety, tax revenue concerns,” (Source: impactnews.com: Central Austin, April 22, 2011).



carrying costs of a house for a period of time while the property appreciates in value and then sell it for a profit.<sup>44</sup> Tourist communities, in particular, may be affected if the workers in low-paying service and tourism related jobs can no longer afford to live in the community or within a reasonable commuting distance.<sup>45</sup>

### **3.2.6 Governmental Administrative Costs**

Short-term rental restrictions create additional administrative burdens on local government, including the processing of permit, licensing and registration applications. Local building officials are likely to be faced with an increased volume of required inspections. Code enforcement personnel and the police officers may be required to assume additional enforcement duties under a short-term rental ordinance. The financial burden of administering a short-term rental ordinance may weigh heavily on vacation-destination communities, where the a high volume of short-term rental properties may require local government to hire additional staff or pay increased overtime costs to current staff in order to implement the short-term rental program.

## **3.3 IMPACTS ON RENTERS**

### **3.3.1 Rental Fees**

As discussed above, the adoption of short-term rental restrictions may cause rental property owners to increase rental rates as a means of recovering licensing and permit fees, inspection and other related costs. If regulations expose a property owner to the risk of incurring a fine or having the owner's rental license suspended or revoked, the owner may also increase the minimum security deposit as a means of deterring tenants from engaging in behavior that might violate the short-term rental regulations.

### **3.3.2 Inventory of Short-Term Rental Units**

Short-term rental restrictions can also reduce the inventory of short-term rental units in a community in various ways. For example, zoning regulations may prohibit short-term rentals in single-family residential zoning districts or within certain areas or neighborhoods. An owner who successfully operated a short-term rental property without complaint prior to the adoption of licensing requirements may be barred from continuing the use if the property does not conform to the new licensing criteria. More generally, owners may simply decide they do not want to assume the increased cost and risk of continuing to use their property as a short-term rental, and withdraw their properties from the inventory of short-term rental in the community.

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<sup>43</sup> APA Report at 2.

<sup>44</sup> *See id.*

<sup>45</sup> *See id.*

### 3.4 UNINTENDED CONSEQUENCES OF SHORT-TERM RENTAL RESTRICTIONS

#### 3.4.1 “Underground Market” for Short-Term Rental Units

Short-term rental restrictions that impose high permit and licensing fees, onerous inspection requirements, and performance standards that are difficult or costly for owners to satisfy might have the unintended effect of creating an underground market for short-term rentals, in which owners continue to rent their properties without obtaining the required permits. Owners who depend on rental income to pay their mortgages to pay the maintenance costs of a second home may be willing to risk incurring fines and other penalties if an ordinance creates obstacles that cannot be overcome or that may make it economically infeasible to obtain a rental permit.<sup>46</sup>

#### 3.4.2 Uncertainty in the Short-Term Housing Market

A short-term rental regulation that authorizes the suspension or revocation of a short-term rental permit can also introduce a degree of uncertainty in the short-term rental housing market. Vacation travelers often reserve short-term housing accommodations several months in advance of a planned vacation, particularly when the stay is planned during a destination’s peak visitation period. Under those circumstances, for example, it is conceivable that a family may make a reservation and pay a deposit several months in advance of a holiday ski vacation only to discover later that the home they had reserved is no longer available because its short-term rental permit was suspended or revoked. In some cases, by the time a vacation home renter makes that discovery, it may be too late to find suitable alternative short-term housing, leaving the vacationer with a negative impression of the local community—an impression that the vacationer is likely to share with others.

## SECTION 4: LEGAL ISSUES RAISED BY SHORT-TERM RENTAL RESTRICTIONS

### 4.1 AUTHORITY TO REGULATE

In general, short-term rental restrictions are typically adopted under the specific authority of a state **zoning enabling statute** or the general **police power** delegated to local governments by the state constitution, or by statute. Zoning regulations that restrict short-term rentals in residential areas have been upheld where the restrictions are found to be substantially related to land use impacts in the area.<sup>47</sup> Prohibiting short-term occupancy in single-family areas has been held to be within the lawful scope of the zoning power.<sup>48</sup>

However, in 2011 the Florida State Legislature enacted legislation that specifically limits the authority of local governments to regulate or prohibit short-term rentals. Enacted as Chapter No.

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<sup>46</sup> See “More destinations shut the door on vacation rentals, *USA Today*, August 6, 2010 (commenting that the ban on short-term rentals in New York City apartments, most of which are already prohibited under many condominium and co-op bylaws, “will simply go further underground”).

<sup>47</sup> 5 RATHKOPF’S THE LAW OF ZONING AND PLANNING § 81:11 (4th Ed 2011) (hereinafter “RATHKOPF”) (citing to *Brown v. Sandy Bd. of Adjustment*, 957 P.2d 207 (Utah Ct. App. 1998) (finding that city has authority to prohibit short-term rentals in single-family neighborhood)).

<sup>48</sup> RATHKOPF § 81:11 (citing *Cope v. City of Cannon Beach*, 855 P.2d 1083, 317 Or. 339 (1993) and *Ewing v. City of Carmel-By-The-Sea*, 234 Cal. App. 3d 1579, 286 Cal. Rptr. 382 (6th Dist. 1991)).

2011-119 on June 2, 2011, the Florida law (entitled “An act relating to public lodging establishments and public food service establishments”) states:

A local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.<sup>49</sup>

As of the date of this paper, Florida appears to be the only state to have enacted legislation limiting the authority of local governments to regulate or prohibit short-term rentals. It is conceivable, however, that the Florida law may become a model for other states. This would appear to be the most likely in those states where short-term rentals comprise a meaningful segment of the tourist lodging industry.

## 4.2 TAKINGS

It is well established that a land use regulation that is excessively restrictive may constitute a “taking” of property for which compensation must be paid under the state constitution and the Fifth and Fourteenth Amendments to the United States Constitution.<sup>50</sup> The prevailing test for determining whether a regulatory taking has occurred was established in the landmark case of *Penn Central Transportation Co. v. City of New York*,<sup>51</sup> decided by the United States Supreme Court in 1978. The *Penn Central* test requires a balancing of the public and private interests involved in each case, weighing the following three factors: (1) the economic impact of the regulation on the property owner; (2) the extent to which the regulation interferes with the property owner’s “distinct investment-backed expectations,” and (3) the character of the governmental action (i.e., physical invasion v. economic interference).<sup>52</sup>

The application of the *Penn Central* “balancing test” is illustrated in an Oregon case that concerned a takings challenge to a short-term rental ordinance. In that case<sup>53</sup> rental property owners challenged a City of Cannon Beach, Oregon ordinance that prohibited the creation of new transient occupancy uses and required existing transient occupancy uses to end by 1997. The petitioners claimed that Ordinance 92-1 constituted a taking of property without just compensation under the Fifth and Fourteenth Amendments.<sup>54</sup> The Supreme Court of Oregon, however, upheld Ordinance 92-1, focusing ultimately on the economic impact of the restrictions:

We next consider whether Ordinance 92-1, by prohibiting transient occupancy, denies property owners economically viable use of their properties. We conclude that it does not. On its face, Ordinance 92-1 permits rentals of dwellings for periods of 14 days or more. The ordinance also permits the owners themselves to reside in the dwellings.

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<sup>49</sup> The enrolled version of House Bill No. 883 is available on the Florida State Legislature’s website at: <http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0883er.docx&DocumentType=Bill&BillNumber=0883&Session=2011>.

<sup>50</sup> PATRICIA E. SALKIN, 2 AMERICAN LAW OF ZONING § 16:1 (5th ed. 2008) (hereinafter “SALKIN”).

<sup>51</sup> *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646 (1978).

<sup>52</sup> SALKIN § 16:9 (citing *Penn Central*, 438 U.S. at 124).

<sup>53</sup> *Cope v. City of Cannon Beach*, 855 P.2d 1083 (Or. 1993).

<sup>54</sup> *See id.* at 1084.

Although those uses may not be as profitable as are shorter-term rentals of the properties, they are economically viable uses.<sup>55</sup>

As the court's analysis indicates, plaintiffs who challenge a short-term rental restriction as a taking of property face an uphill battle. As a practical matter, it is difficult to argue that a short-term rental prohibition denies the owner of *all* economically viable use of his land, particularly where longer-term rentals are still allowed.

#### 4.3 DUE PROCESS

The Fourteenth Amendment to the U.S. Constitution prohibits any governmental action that deprives “any person of . . . liberty or property, without **due process** of law.” This clause imposes both substantive and procedural requirements. The substantive component of the due process clause, known as “substantive due process,” tests the governmental purposes implemented by land use regulations. To satisfy substantive due process, a regulation must advance a legitimate governmental purpose.<sup>56</sup> In general, a local land use ordinance will survive a substantive due process challenge if there exists a rational relationship between the terms of the ordinance and a legitimate governmental interest.<sup>57</sup> A local ordinance may be challenged on due process grounds either on its face, or as applied to a particular case. When a landowner makes a *facial* challenge to a zoning ordinance, “he or she argues that *any* application of the ordinance is unconstitutional.”<sup>58</sup> On the other hand, when a landowner makes an *as applied* challenge, he or she attacks “only the specific decision that applied the ordinance to his or her property, not the ordinance in general.”<sup>59</sup>

In a California case,<sup>60</sup> the plaintiffs challenged the city of Carmel's transient rental ordinance on substantive due process grounds, arguing that the prohibition was “not rationally related to the goals sought to be achieved.”<sup>61</sup> The California court of appeals rejected the substantive due process claim, finding that the ordinance was rationally related to the goals and policies set forth in the city's general plan, as well as the stated purpose of the R-1 district.<sup>62</sup> In support of its conclusion, the court explained that short-term rentals were inconsistent with the residential character of the community:

It stands to reason that the “residential character” of a neighborhood is threatened when a significant number of homes—at least 12 percent in this case, according to the record—are occupied not by permanent residents but by a stream of tenants staying a week-end, a week, or even 29 days. Whether or not transient rentals have the other “unmitigatable, adverse impacts” cited by the council, such rentals undoubtedly affect the essential character of a neighborhood and the stability of a community. Short-term tenants have little interest in public agencies or in the welfare of the citizenry. They do not participate in local government, coach little league, or join the hospital guild. They

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<sup>55</sup> *Id.* at 1086-87 (internal citations omitted).

<sup>56</sup> See SALKIN § 15:2.

<sup>57</sup> See *id.*

<sup>58</sup> *WMX Technologies, Inc. v. Gasconade County*, 105 F.3d 1195, 1198-99 n.1 (8th Cir. 1997) (emphasis added).

<sup>59</sup> See SALKIN § 15:2.

<sup>60</sup> *Ewing v. City of Carmel-by-the-Sea*, 234 Cal. App. 3d 1579 (6<sup>th</sup> Dist. Cal. 1991).

<sup>61</sup> *Id.* at 1596.

<sup>62</sup> See *id.* at 1589.

do not lead a scout troop, volunteer at the library, or keep an eye on an elderly neighbor. Literally, they are here today and gone tomorrow—without engaging in the sort of activities that weld and strengthen a community.<sup>63</sup>

Referring back to its discussion of Carmel’s stated goals, the court summarily concluded:

We have already determined that the ordinance is rationally related to the stated goal. Carmel wishes to enhance and maintain the residential character of the R-1 District. Limiting transient commercial use of residential property for remuneration in the R-1 District addresses that goal.<sup>64</sup>

The California state court decision illustrates the difficulty of challenging a short-term rental restriction on substantive due process grounds. In general, a short-term rental restriction seems likely to survive substantive due process scrutiny if the local jurisdiction articulates a legitimate governmental interest (e.g., the protection of residential character in predominantly single-family neighborhoods), and can produce some findings connecting short-term rental activity to the types of neighborhood and community impacts described in Carmel’s transient rental ordinance.

#### **4.4 EQUAL PROTECTION**

The Equal Protection Clause of the Fourteenth Amendment commands that no State shall “deny to any person within its jurisdiction the equal protection of the laws,” which states the basic principle that all persons similarly situated should be treated alike.<sup>65</sup> The general rule is that a state or local law is presumed to be valid and will be sustained if the classification drawn by the law is rationally related to a legitimate state interest.<sup>66</sup> If a local or state law does not involve a suspect classification (e.g., one that treats persons differently on the basis of race, alienage, or national origin) or a fundamental right (e.g., the right to vote, the right to interstate travel), then an equal protection challenge is analyzed under the rational basis test. The rational basis test is a very deferential test, under which an ordinance generally will be upheld if there is any “reasonably conceivable state of facts that could provide a rational basis for the classification.”<sup>67</sup> Moreover, the rational basis test does not require a legislative body to articulate its reasons for enacting an ordinance, because “[i]t is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature.”<sup>68</sup> This means that a court may find a rational basis for a law, even if it is one that was not articulated by the legislative body.

A short-term rental ordinance may be vulnerable to an equal protection challenge on the ground that it treats similar properties differently based on whether a property is occupied by short-term tenants or longer term tenants. For example, take an ordinance that generally does not impose a

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<sup>63</sup> *Id.* at 1591.

<sup>64</sup> *Id.* at 1596.

<sup>65</sup> See generally *Plyler v. Doe*, 457 U.S. 202, 216 (1982).

<sup>66</sup> See generally *Schweiker v. Wilson*, 450 U.S. 221, 230 (1981); *United States Railroad Retirement Board v. Fritz*, 449 U.S. 166, 174-175 (1980); *Vance v. Bradley*, 440 U.S. 93, 97 (1979); *New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

<sup>67</sup> *United States Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 101 S. Ct. 453, (1980).

<sup>68</sup> *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 113 S. Ct. 2096 (1993).

maximum occupancy limit on single family homes in a city's residential zoning districts, but does impose such a limit on homes that are used for short-term rentals. On its face, this ordinance treats similar properties (i.e., single family homes in the same zoning district) differently, based on whether they are used as a short-term rental. Because no suspect classification or a fundamental right is implicated, an equal protection claim against the ordinance would be reviewed under the deferential rational basis test. For the same rational basis reasons discussed above in connection with a substantive due process challenge, the short-term rental ordinance is likely to survive judicial scrutiny.

Since 2000, as a result of the U.S. Supreme Court decision in *Village of Willowbrook v. Olech*,<sup>69</sup> "selective enforcement" claims in land use cases may also be brought under the Equal Protection clause. Selective enforcement claims generally assert that a municipality arbitrarily applied its land use ordinance to a conditional use permit or other land use approval, or that enforcement of the ordinance was arbitrarily selective.<sup>70</sup> In *Olech*, the village refused to supply water to the plaintiffs unless they granted the village an easement that it had not required of other property owners. It was alleged that the village did so to retaliate for the plaintiffs having brought an earlier, unrelated suit against the village. The question before the Supreme Court was whether an individual who does not have a suspect classification or fundamental interest claim can nevertheless establish a "class of one" equal protection violation when vindictiveness motivated the disparate treatment. The Court held:

Our cases have recognized successful equal protection claims brought by a "class of one," where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. In so doing, we have explained that "the purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents."<sup>71</sup>

From a plaintiff's perspective, the difficult part of the *Olech* decision is its requirement that selective enforcement claims involve intentional treatment. Moreover, it is unclear whether the intentional treatment rule requires merely an intent to do an act or, more specifically, the intent to harm or punish an individual for the exercise of lawful rights.<sup>72</sup> Since *Olech*, most cases involving "class of one" equal protection claims that assert selective enforcement have not been successful.<sup>73</sup>

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<sup>69</sup> *Village of Willowbrook v. Olech*, 528 U.S. 562, 120 S. Ct. 1073 (2000).

<sup>70</sup> BRIAN W. BLAESSER & ALAN C. WEINSTEIN, *FEDERAL LAND USE LAW & LITIGATION* § 1:20 (Thomson-Reuters/West: 2011) (hereinafter "BLAESSER & WEINSTEIN").

<sup>71</sup> *Olech*, 528 U.S. at 564 (citations omitted).

<sup>72</sup> See BLAESSER & WEINSTEIN § 1:20.

<sup>73</sup> See generally BLAESSER & WEINSTEIN § 1:20, fn. 7.

## **SECTION 5: WAYS TO ADDRESS PROPOSALS TO ESTABLISH SHORT-TERM RENTAL RESTRICTIONS**

### **5.1 QUESTION THE NEED FOR SHORT-TERM RENTAL RESTRICTIONS**

One of the first questions that should be asked when a city or town proposes to adopt a short-term rental ordinance is whether there truly exists a need for the restrictions. In some cases, the perceived need for a short-term rental ordinance may be based solely on anecdotal evidence about the alleged problems caused by short-term rental tenants rather than on documented evidence that short-term rental tenants are causing problems. If nothing more than anecdotal evidence is provided in support of a proposed ordinance, it may allow opponents to later argue that it was adopted arbitrarily without any rational basis.

#### **5.1.1 Empirical Analysis**

Where proposed short-term rental restrictions appear to be supported solely by anecdotal evidence, Realtors<sup>®</sup> should question whether empirical studies using data from police call logs, code enforcement activity, and prosecutorial records have actually established the alleged adverse impacts to the community, and the degree to which those impacts are attributable to short-term rental properties. Below are some examples of the types of inquiries Realtors<sup>®</sup> can make of local government officials:

- What number of complaints logged by the local code enforcement and police departments were generated by short-term rentals? Does the data evidence an increase in the number of complaints attributable to short-term rentals over the last five years?
- How do the complaints concerning short-term rentals relate to the number of individuals occupying the short-term rental that is the subject of the complaint? Does the city or town have factual support to justify a proposed occupancy limit for short-term rental housing and to what extent does this limitation exceed the occupancy limits applicable to other types of housing?
- Does a specific type of complaint (e.g., noise disturbance, litter or trash, parking violations, or late night parties) constitute a large percentage of the total number of complaints recorded in the last five years? If so, does a provision of the local zoning or general ordinance already regulate the offending behavior? If it is possible to address the majority of the problems by enforcing existing nuisance regulations, rather than by imposing new maximum occupancy limits on short-term rentals, it may call into question the need for the proposed ordinance.
- Does a disproportionate number of complaints arise from a small number of rental properties? If yes, then a more appropriate response might be to adopt narrowly tailored regulations. An

example of this approach would be a regulation that would apply only after one or more violations are found on a property, rather than imposing the cost and disruption of new regulations on all owners of short-term rental property.

### **5.1.2 Stakeholder Input**

Realtors<sup>®</sup> should also urge that local government officials seek and consider input from individuals and organizations with a stake in the short-term rental industry as early in the process as possible. Stakeholder groups should include representatives of local homeowner associations, rental property management associations, the local Realtor<sup>®</sup> associations, the chamber of commerce, local tourism bureau, and other organizations involved in the short-term rental industry.

### **5.1.3 Public Process**

Realtors<sup>®</sup> should actively monitor and participate in the public hearing process. Early on, Realtors<sup>®</sup> should request an invitation to participate in any stakeholder groups formed by the local government prior to the public hearing process. Local governments often allow interested parties to discuss their concerns with local officials responsible for drafting and advising the local legislative body on a proposed ordinance at the beginning of the process. To the extent possible, Realtors<sup>®</sup> should take advantage of this opportunity to meet with the local planner or other staff members who may be drafting a proposed short-term rental ordinance.

State and local open public meetings laws generally require local legislative bodies to publish notice of scheduled public hearings, typically in the local newspaper, by posted notice at city or town hall, and/or on the official website of the city or town. If a draft of the proposed short-term rental ordinance is available prior to the public hearing, Realtors<sup>®</sup> should request a copy and review it thoroughly in advance of the hearing.<sup>74</sup> Realtors<sup>®</sup> should be prepared to submit written comments and/or to testify at the public hearing about their concerns with the proposal.

## **5.2 SUGGEST ALTERNATIVES TO SHORT-TERM RENTAL RESTRICTIONS**

### **5.2.1 Enforcement of Existing Ordinances**

Communities that wish to address the potential negative impacts of short-term rentals on residential neighborhoods likely already have regulations in place that are aimed at curtailing those types of impacts on a community-wide basis. In many cases the existing ordinances already address the types of behaviors and activity that would be the focus of short-term rental performance standards or operational restrictions. Below are some examples.

#### **5.2.1.1 Noise Limits**

Absent **preemption** by federal or state law, the control of noise is generally within the police power authority of local government. Communities commonly adopt noise control ordinances

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<sup>74</sup> The Realtor<sup>®</sup> association may obtain assistance in this effort through NAR's Land Use Initiative program.



for the purpose of controlling unnecessary, excessive, and annoying noise within the community. In the City of San Luis Obispo, California, for example, the Noise Control Ordinance Noise Control Ordinance (Chapter 9.12 of the San Luis Obispo Municipal Code) expressly declares any noise in violation of Chapter 9.12 to be a **public nuisance**, punishable by civil or criminal action. The term “noise disturbance” is defined to mean:

any sound which (a) endangers or injures the safety or health of human beings or animals, or (b) annoys or disturbs reasonable persons of normal sensitivities, or (c) endangers or injures personal or real property, or (d) violates the factors set forth in Section 9.12.060 of this chapter. Compliance with the quantitative standards as listed in this chapter shall constitute elimination of a noise disturbance.<sup>75</sup>

Additionally, specific types of noise violations that commonly arise in residential neighborhoods are regulated under Section 9.12.050, including the following:

- Noise disturbances that are “plainly audible at a distance of fifty feet from the noisemaker, unless the noise does not penetrate beyond the boundaries of the noisemaker’s own premise.”<sup>76</sup>
- Operating, playing or permitting the operation or playing of any radio, television set, phonograph, drum, musical instrument, or similar device between the hours of 10:00 PM and 7:00 AM in such a manner as to create a noise disturbance audible across a property line.<sup>77</sup>
- Operating, playing or permitting the operation or playing of any radio, television set, phonograph, drum, musical instrument, or similar device in a manner that creates a noise disturbance at any time in excess of noise levels defined in Section 9.12.060 (measured by decibel levels and duration of the disturbance).<sup>78</sup>

### 5.2.1.2 Public Nuisance

In general, cities and counties have the police power to declare and abate nuisances. The Boulder, Colorado nuisance abatement ordinance (Title 10, Chapter 2.5 of the Boulder Revised Code) defines a “public nuisance” to mean:

[A]ny condition or use of any parcel on or in which two or more separate violations of the Boulder Municipal Code have occurred within a twelve-month period, or three or more separate violations have occurred within a twenty-four month period, if, during each such violation, the conduct of the person committing the violation was such as to annoy residents in the vicinity of the parcel or passers-by on the public streets, sidewalks, and rights-of-way in the vicinity of the parcel.<sup>79</sup>

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<sup>75</sup> City of San Luis, California Municipal Code § 9.12.020(U).

<sup>76</sup> See San Luis Municipal Code § 9.12.050(A).

<sup>77</sup> See San Luis Municipal Code § 9.12.050(B)(1)(a).

<sup>78</sup> See San Luis Municipal Code § 9.12.050(B)(1)(b).

<sup>79</sup> “Nuisance Abatement Information Sheet,” City of Boulder, Colorado (available on-line at [http://www.bouldercolorado.gov/files/PDS/Code%20Enforcement/nuisanceabat\\_info.pdf](http://www.bouldercolorado.gov/files/PDS/Code%20Enforcement/nuisanceabat_info.pdf)).

No violations or actions are designated as “public nuisance” acts. Instead, the determination whether a violation triggers the nuisance abatement process is made by the responding law enforcement agency. For instance, in some cases, a trash violation may trigger the nuisance abatement process, while in others the problem might be best handled with a municipal court summons. Legal remedies to abate public nuisances generally include the filing of a criminal complaint, or a civil action, or an administrative abatement.

### **5.2.1.3 Property Maintenance Standards**

A property maintenance ordinance might be adopted for the purpose of maintaining, preserving, or improving a community’s inventory of residential and non-residential buildings. To accomplish this, property maintenance ordinances typically establish standards for the exterior maintenance of affected structures, including basic structural elements such as foundations and supporting columns, exterior finish surfaces, and doors and windows. Property maintenance standards may also require property owners to maintain existing trees, shrubs and other significant vegetation, and to keep all exterior areas sanitary free of trash and refuse.

### **5.2.1.4 Unruly Public Gathering Ordinance**

Some communities, particularly college towns, such as Berkeley, CA and Tucson, AZ, have adopted “unruly gathering” ordinances that create significant sanctions for residents and property owners who host gatherings that create a substantial disturbance, as well as for party attendees who contribute to the problem. A significant advantage that an unruly gathering ordinance would have over a general noise ordinance or short-term rental ordinance is that the individual responsible for the disturbance is also penalized, rather than the tenant and/or property owner alone. Since the penalties for violating a noise ordinance generally apply only to the residents of the property where the violation occurs, a noise ordinance is unlikely to deter party guests from violating its terms.

### **5.2.1.5 Nighttime Curfew**

To the extent that under-aged drinking and juvenile crime are a significant contributors to excessive noise and party disturbances in short-term rental properties in residential neighborhoods, a nighttime curfew ordinance that prohibits persons under the age of 18 years from being on or about public streets and public places during specified hours of the day could be an effective deterrent. The effectiveness of nighttime curfews is evidenced by a 2002 survey published by National League of Cities, in which 97% of communities that have nighttime curfew ordinances reported that they help combat juvenile crime. It bears noting, however, that a juvenile curfew ordinance generally would not be applicable to college students and other youthful offenders over the age of eighteen. To the extent that parties hosted and attended by college-aged young people are perceived as causing the disturbances that are of greatest concern, a curfew ordinance would probably have little, if any, effect.

### **5.2.1.6 Parking Restrictions**

Communities often address the problem of improperly parked vehicles and excessive numbers of vehicles parked in residential neighborhoods through off-street parking regulations. These regulations may include provisions that prohibit vehicle parking within front yard setback areas in residential zoning districts and that restrict vehicle parking to hard surface driveways or designated parking areas. Regulations may also prohibit parking on grass areas, sidewalks, or within a certain distance of side property lines.

## **5.2.2 Adoption of Ordinances that Target Community-Wide Issues**

Communities that have not adopted general community-wide noise regulations or the other regulations aimed at curtailing the types of behaviors and activities that would be regulated under a short-term rental ordinance, should be encouraged to adopt such general regulations rather than to single out short-term rental properties for regulation.

## **5.3 SHORT-TERM RENTAL HOUSING REGULATION BEST PRACTICES**

This section presents several types of “best practice” provisions that have been implemented in jurisdictions which have short-term rental restrictions and which Realtors® may find acceptable, depending upon local market conditions. Each section begins with a brief description of the type of best practices. This description is followed by one or more examples of the best practice technique as adopted by local jurisdictions.

### **5.3.1 Narrowly-Tailored Regulations**

An effective short-term rental ordinance should be narrowly tailored to address the specific needs of the local community. The potential for over-regulation is a legitimate concern, particularly when a proposed ordinance is driven by the vocal complaints of one or more permanent residents about their negative experiences with nearby short-term renters. Residents often complain that short-term rentals are inherently incompatible with residential neighborhoods and demand an outright prohibition against the use. In those circumstances, the concern is that elected officials, in an effort to please their constituency, may acquiesce to those demands without carefully considering: (a) whether there truly exists a need for short-term rental restrictions; and (b) if a need exists, what regulatory approach is best-suited to addressing the particular needs of the community.

Short-term rental restrictions can be tailored to fit the specific needs of the community in several important ways. As a threshold matter, communities should consider the degree to which short-term rentals need to be regulated. If a community’s overriding concern is that a significant number of residential properties that are being used as short-term rentals are failing to report and pay local and state transient occupancy taxes, then an ordinance requiring short-term rental owners to register their properties with the local government and penalizing noncompliance may be sufficient to address that concern. To the extent that short-term rentals are a problem only in certain residential neighborhoods, a rationally justified ordinance that applies only in those areas

would be a more appropriate response than one that regulates the use more broadly, even in areas where short-term rentals not only are accepted, but also are highly desired.

**Best Practice Example: Clatsop County, Oregon.** In Clatsop County, the Comprehensive Plan/Zoning Map divides the county into nearly forty zoning district designations, including more than a dozen residential districts.<sup>80</sup> The county’s short term vacation rental ordinance, however, applies only to properties within the Arch Cape Rural Community residential district.<sup>81</sup>

### 5.3.2 “Grandfathering” Provisions

Short-term rentals that lawfully existed prior to the enactment of a short-term rental ordinance, but are not allowed under the newly adopted ordinance—either because the use is prohibited outright or because the applicant is unable to satisfy the criteria for obtaining a permit—should be allowed to continue (i.e., “grandfathered”) if the property owner is able to demonstrate that the short-term rental use pre-dated the ordinance. Zoning ordinances typically contain a general nonconformity provision that establishes the requirements for a use or structure to secure a legal nonconforming status. However, short-term rental ordinances may also contain specific grandfathering clauses that allow short-term rentals in existence on the effective date of the ordinance to continue even if the property cannot satisfy the applicable requirements.

**Best Practice Example: Kauai County, Hawaii.** Under Section 8-3.3 of the Kauai County Code, transient vacation rentals are generally prohibited in the R-1, R-2, R-4, and R-6 residential zoning districts, except within the designated Visitor Destination Areas established under the Code. However, under Sections 8-17.9 and -17.10, single-family transient vacation rentals in non-Vacation Destination Areas that were in lawful use *prior* to the effective date of the ordinance are allowed to continue, subject to obtaining a nonconforming use certificate. To obtain a nonconforming use certificate, an owner must provide a sworn affidavit and demonstrate to the satisfaction of the Planning Director that:

[the] dwelling unit was being used as a vacation rental on an ongoing basis prior to the effective date of this ordinance and was in compliance with all State and County land use and planning laws . . . up to and including the time of application for a nonconforming use certificate.<sup>82</sup>

The owner of operator of a transient vacation rental unit bears the burden of proof in establishing that the use is properly nonconforming based on submission of the following documentary evidence: records of occupancy and tax documents, including: State of Hawaii general excise tax and transient accommodations tax filings, federal and/or state income tax returns for the relevant time period, reservation lists, and receipts showing payment of deposits for reservations and fees for occupancy of the subject property by transient guests.<sup>83</sup>

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<sup>80</sup> See Clatsop County, OR Land and Water Development and Use Ordinance, Table 3.010.

<sup>81</sup> See Clatsop County, OR Ordinance No. 03-13.

<sup>82</sup> Kauai County Code § 8-17.10(c).

<sup>83</sup> Kauai County Code § 8-17.10(e).

**Best Practice Example: Monterey County, California.** Monterey County’s short-term rental ordinance grandfathers short-term rental units that were in operation before the ordinance was adopted. Section 21.64.280 of the Zoning Ordinance provides:

Transient use of residential property in existence on the effective date of this Section shall, upon application, be issued an administrative permit provided that any such units devoted to transient use are registered with the Director of Planning and Building Inspection and the administrative permit application is filed within 90 days of the effective date of this Section. . . . The owner/registrant shall have the burden of demonstrating that the transient use was established. Payment of transient occupancy taxes shall be, but is no the exclusive method of demonstrating, evidence of the existence of historic transient use of residential property.<sup>84</sup>

### 5.3.3 Quantitative and Operational Restrictions

*Quantitative Restrictions.* The use of quantitative restrictions (i.e., fixed caps, proximity restrictions, and maximum short-term to long-term occupancy ratios) as a means of mitigating the impacts of short-term rentals can be viewed in two ways. On the one hand, such limitations on the number of short-term rentals allowed in a community are preferable to an outright prohibition on the use. On the other hand, for property owners desiring to enter the short-term rental market after the effective date of a short-term rental ordinance, a quantitative restriction may act as a barrier to entry. Quantitative restrictions therefore may constitute a reasonable compromise position in circumstances where community support is divided on a proposed short-term rental ban.

Jurisdictions considering a quantitative restriction should carefully consider which technique is best suited to further the needs and goals of the community. For example, if a community finds that the negative impacts of short-term rentals are manifested only when they exist in clusters or in close proximity to one another in a residential neighborhood, then a *proximity restriction* would be a more effective technique than a fixed cap or ratio. On the other hand for a community seeking to maintain a balance between its long-term housing needs and visitor-oriented accommodations, a maximum *ratio* of long term residential dwelling units to short-term rental permits would be more effective than a fixed cap or proximity restriction.

**Best Practice Example: Mendocino County, California.** Section 20.748.005 of the Mendocino County Code states that the county’s “single unit rentals and vacation rentals” ordinance is intended, in part, “to restore and maintain a balance between the long-term housing needs of the community and visitor oriented uses.” To maintain that balance, the ordinance requires the county to “maintain, at all times, for new vacation home rentals or single unit rentals approved after the effective date of this ordinance, a ratio of thirteen (13) long term residential dwelling units to one (1) single unit rental or vacation home rental.”<sup>85</sup> While the ordinance does not require any reduction in the number of single unit rentals and vacation rentals in existence on the effective date of the ordinance, no new applications may be approved unless and until

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<sup>84</sup> Monterey County, CA Zoning Ordinance § 21.64.280(d)(1)(b).

<sup>85</sup> Mendocino County, CA Code § 20.748.020(A).

thirteen new residential dwelling units have been completed since the single unit rental or vacation home rental permit was approved.<sup>86</sup>

**Best Practice Example: San Luis Obispo County, California.** The vacation rental ordinance adopted by San Luis Obispo County was adopted for the general purpose of ensuring that short-term rental uses “will be compatible with surrounding residential uses and will not act to harm and alter the neighborhoods they are located within.”<sup>87</sup> More specifically, the county found that “residential vacation rentals have the potential to be incompatible with surrounding residential uses, especially when several are concentrated in the same area, thereby having the potential for a deleterious effect on the adjacent full time residents.”<sup>88</sup> Accordingly, rather than prohibiting vacation rentals in county neighborhoods, San Luis Obispo County adopted the following proximity restriction on the use:

[N]o residential vacation rental shall be located within 200 linear feet of a parcel on the same block on which is located any residential vacation rental or other type of visitor-servicing accommodation that is outside of the Commercial land use category.<sup>89</sup>

*Operational Restrictions.* Although short-term rental restrictions commonly include some operational restrictions, the restrictions often unnecessarily duplicate generally applicable regulations already adopted by the local jurisdiction. Several of these types of regulations are discussed in Section 5.2 above. In general, the types of negative impacts most commonly cited by communities with short-term rental restrictions—late-night music and partying, garbage left out on the street on non-pickup days, illegal parking, and negligent property maintenance—are community-wide concerns that are best regulated with a generally applicable ordinance rather than one that singles out short-term rentals for disparate treatment. It stands to reason that the impacts that these types of activities have on residential neighborhoods are the same regardless of whether they are produced by long-term residents or short-term renters. Therefore, the best practice technique for addressing those concerns is to adopt a general ordinance that governs the activity or behavior in all areas of the community.

### 5.3.4 Licensing/Registration Requirements

Virtually all short-term rental ordinances require owners who intend to offer their property for use as a short-term rental to obtain a license or permit prior to commencing the use. In general, licensing and registration requirements enable local governments to create and maintain a database of dwelling units being operated as short-term rentals for code enforcement and transient occupancy tax collection in jurisdictions authorized to collect such taxes. The procedures and criteria for obtaining a short-term rental license or permit should be clearly set out in the local ordinance. Short-term rental licensing and registration applications should be processed administratively and without need for a public hearing. Such licensing/registration requirements should not require a conditional use permit or a similar-type zoning permit.

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<sup>86</sup> See Mendocino County, CA Code § 20.748.020(A)-(B)..

<sup>87</sup> San Luis Obispo County, CA Code § 23.08.165(a).

<sup>88</sup> *Id.*

<sup>89</sup> San Luis Obispo County, CA Code § 23.08.165(c).

**Best Practice Example: City of Palm Springs, California.** In the City of Palm Springs, residential property owners are required to register the property as a vacation rental prior to commencing the use. Section 5.25.060 of the Palm Springs Municipal Code requires owners to submit a registration form that is furnished by the city and that requires certain information to be provided, including, for example: (a) the name, address, and telephone number of the owner and his agent, if any; (2) the address of the vacation rental unit; (3) the number of bedrooms in the rental unit; and (4) evidence of a valid business license issued for the business of operating vacation rentals, or submission of a certificate that owner is exempt or otherwise not covered by the city’s Business Tax Ordinance for such activity. Vacation rental registration also requires the owner to pay a fee in an amount to be established by the city council, subject to the limitation that the registration fee “shall be no greater than necessary to defer the cost incurred by the city in administering the [vacation rental registration].”<sup>90</sup>

**Best Practice Example: City of Encinitas, California.** In the City of Encinitas, short-term rental permits likewise require submittal of an application form and payment of a fee no greater than necessary to defer the cost incurred by the city in administering the short-term rental permit program. Short-term rental permits will be granted “unless the applicant does not meet the conditions and requirements of the permit, or fails to demonstrate the ability to comply with the Encinitas Municipal Code or other applicable law.”<sup>91</sup>

### 5.3.5 Inspection Requirements

As noted in Section 3.1.3, many communities require short-term rental properties to pass certain inspections prior to the issuance or renewal of a short-term rental permit. However, mandatory inspection requirements arguably do not advance a community’s interests in protecting and maintaining residential character or preventing the adverse effects of transient occupancy on residential neighborhoods. Therefore, if a short-term rental ordinance is specifically adopted for reasons related to protection of residential character, then a mandatory inspection requirement is unnecessary and should not be imposed upon rental property owners.

**Best Practice Examples: Douglas County, Nevada; City of Palm Springs, California; and Sonoma County, California.** The short-term rental ordinances adopted by these communities were generally adopted for reasons related to the impacts of short-term rental uses on residential neighborhoods. However, none of these ordinances include a mandatory inspection requirement, either at the time of initial permit issuance or thereafter.

Mandatory inspection requirements may be justified in cases where a short-term rental ordinance is adopted for the purpose (at least in part) of ensuring the safety of short-term rental tenants. For example, one of the stated purposes of the transient private home rental ordinance adopted by the City of Big Bear Lake, California is “to ensure . . . that minimum health and safety standards are maintained in such units to protect the visitor from unsafe or unsanitary conditions.”<sup>92</sup> It stands to reason that a provision requiring inspection of transient private rental

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<sup>90</sup> City of Palm Springs, CA Municipal Code § 5.25.060(b).

<sup>91</sup> See City of Encinitas, CA Municipal Code § 9.38.040(A)(3).

<sup>92</sup> City of Bear Lake, CA Municipal Code § 17.03.310(A).

homes in Big Bear Lake to determine compliance with such minimum health and safety standards would further that purpose.

However, even if a mandatory inspection requirement can be justified, the scope of the inspection program should be limited to the initial permit issuance and thereafter only on a reasonable periodic basis. Provisions requiring short-term rental units to be inspected annually (typically as a condition precedent to the issuance of a permit renewal), such as Section 17.03.310(D)(2) of the Big Bear Lake ordinance, are unnecessarily burdensome on owners and the local government alike.

**Best Practice Example: City of Cannon Beach, Oregon.** The short-term rental ordinance adopted by the City of Cannon Beach provides an example of a more reasonable periodic inspection requirement. Under Section 17.77.040(A)(2) of the Cannon Beach Zoning Code, at the time of application for a new transient rental permit (or new vacation home rental permit) the dwelling is subject to inspection by a local building official to determine conformance with the requirements of the Uniform Housing Code. Thereafter, twenty percent of the dwellings that have a transient rental or vacation home rental permit are inspected each year, so that over a five-year period, all such dwellings have been re-inspected.<sup>93</sup>

### 5.3.6 Enforcement Provisions

When short-term rental restrictions are adopted pursuant to a local government's zoning authority and incorporated into the jurisdiction's zoning code, it is reasonable to expect the ordinance to be enforced in accordance with the generally applicable enforcement provisions of the zoning code, if one exists. Similarly, it is reasonable to expect that short-term rental registration and licensing provisions that are incorporated into a community's general (non-zoning) code to be enforced pursuant to the generally applicable code enforcement provision. The short term rental regulations adopted in Tillamook County and Clatsop County, Oregon and Monterey County, California, for example, are enforced in accordance with generally applicable enforcement and penalty provisions.

It is not uncommon, however, for communities to enact special enforcement and penalty provisions in their short-term rental ordinances. Many short-term rental ordinances contain enforcement and penalty provisions that penalize violations more severely than other types of code violations. In Palm Springs, California, for example, a first violation of the Vacation Rental Ordinance is subject to a \$250 fine and subsequent violations are subject to a fine of \$500.<sup>94</sup> By contrast, under Section 1.06.030 of the Palm Springs Municipal Code, the general penalties for code violations are \$100 for the first administrative citation and \$250 for the second. The Vacation Rental Ordinance does not explain why violations of that ordinance are penalized more severely than other types of code violations.

Enforcement provisions should not penalize short-term rental property owners (or their agents) for violations beyond their control. For example, if a short-term rental *tenant* violates a noise level restriction, the property owner should not be held responsible for the violation.

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<sup>93</sup> See City of Cannon Beach, OR Zoning Code § 17.77.040(2)(a).

<sup>94</sup> See City of Palm Springs, CA Municipal Code § 5.25.090(a).



**Best Practice Example: Douglas County, Nevada.** Chapter 5.40 of the Douglas County Code regulates vacation home rentals in the Tahoe Township. Although the vacation home rental ordinance imposes certain operational restrictions on permitted rental units (e.g., parking and occupancy limitations and trash/refuse container rules), Section 5.40.110 states that a permit may be suspended or revoked only for a violation committed by the owner.

**5.41.110 Violation and administrative penalties.**

- A. The following conduct is a violation for which the permit [sic] suspended or revoked:
  - 1. The owner has failed to comply with the standard conditions specified in section 5.40.090(A) of this code; or
  - 2. The owner has failed to comply with additional conditions imposed pursuant to the provisions of section 5.40.090(B) and (C) of this code; or
  - 3. The owner has violated the provisions of this chapter; or
  - 4. The owner has failed to collect or remit to the county the transient occupancy and lodging taxes as required by Title 3 of this code.
  - 5. Any false or misleading information supplied in the application process.

Prior to the imposition of fines or other penalties, a short-term rental ordinance should conform to the due process requirements established under state law and/or the local jurisdictions charter or code of ordinances. At a minimum, before fines or other penalties are imposed, property owners should be given notice of, and an opportunity to cure, any alleged violation, except where exigent public safety concerns exist. As demonstrated in the best practice examples below, property owners should be given the opportunity to request a public hearing and have the right to appeal a local government's decision to suspend or revoke a short-term rental permit.

**Best Practice Example: City of Encinitas, California.** Under Section 9.38.060 of the City of Encinitas short-term rental ordinance, penalties may be imposed and permits may be suspended only in accordance with the following provisions:

- A. The City Manager shall cause an investigation to be conducted whenever there is reason to believe that a property owner has failed to comply with the provisions of this Chapter. Should the investigation reveal substantial evidence to support a finding that a violation occurred, the investigator shall issue written notice of the violation and intention to impose a penalty, or penalty and suspend the permit. The written notice shall be served on the property owner and operator or agent and shall specify the facts which in the opinion of the investigator, constitute substantial evidence to establish grounds for imposition of the penalties, or penalties and suspension, and specify that the penalties will be imposed and/or that the permit will be suspended and penalties imposed within 15 days from the date the notice is given unless the owner and/or operator files with the city clerk the fine amount and a request for a hearing before the City Manager.
- B. If the owner requests a hearing within the time specified in subsection (A), the City Clerk shall serve written notice on the owner and operator, by mail, of the date, time and place for the hearing which shall be scheduled not less than 15 days, nor more

than 45 days of receipt of request for a hearing. The City Manager or his or her designee shall preside over the hearing. The City Manager or his or her designee shall impose the penalties, or penalties and suspend the permit only upon a finding that a violation has been proven by a preponderance of the evidence, and that the penalty, or penalty and suspension are consistent with this Chapter. The hearing shall be conducted according to the rules normally applicable to administrative hearings. A decision shall be rendered within 30 days of the hearing and the decision shall be appealable to the City Council if filed with the City Clerk no later than 15 days thereafter, pursuant to Chapter 1.12.<sup>95</sup>

**Best Practice Example: City of Cannon Beach, Oregon.** Section 17.77.050(B) of the Cannon Beach Zoning Code provides another example of the notice and public hearing process afforded to short-term rental property owners prior to the imposition of fines or the revocation of a permit.

5. The city shall provide the permit holder with a written notice of any violation of subsection (A)(4) of this section that has occurred. If applicable, a copy of the warning notice shall be sent to the local representative.
6. Pursuant to subsections (B)(4)(b) through (d) of this section, the city shall provide the permit holder with a written notice of the permit suspension and the reason for that suspension. The permit holder may appeal the suspension to the city council by filing a letter of appeal with the city manager within twenty days after the date of the mailing of the city manager's order to suspend the permit. The city manager's suspension shall be stayed until the appeal has been determined by the city council. The city council shall conduct a hearing on the appeal within sixty days of the date of the filing of the letter of appeal. At the appeal, the permit holder may present such evidence as may be relevant. At the conclusion of the hearing, based on the evidence it has received, the council may uphold, modify, or overturn the decision of the city manager to suspend the permit based on the evidence it received.
7. Pursuant to subsection (B)(4)(e) of this section, the city shall provide the permit holder with a written notice that it intends to revoke the permit and the reasons for the revocation. The city council shall hold a hearing on the proposed revocation of the permit. At the hearing, the permit holder may present such evidence as may be relevant. At the conclusion of the hearing, based on the evidence it has received, the council may determine not to revoke the permit, attach conditions to the permit, or revoke the permit.
8. A person who has had a transient rental occupancy permit or a vacation home rental permit revoked shall not be permitted to apply for either type of permit at a later date.<sup>96</sup>

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<sup>95</sup> City of Encinitas, CA Municipal Code § 9.38.060.

<sup>96</sup> City of Cannon Beach, OR Zoning Code § 17.77.050(B)

## GLOSSARY OF TERMS

**Common law:** Law developed by judges through decisions of courts and similar tribunals rather than through legislation (statutes) or executive actions.

**Due Process:** The constitutional protections given to persons to ensure that laws are not unreasonable, arbitrary, or capricious. When such laws affect individuals' lives, liberty, and property, due process requires that they have sufficient notice and opportunity to be heard in an orderly proceeding suited to the nature of the matter at issue, whether a court of law or a zoning board of appeals. Essentially, due process means fairness.

**Equal Protection:** The right of all persons under like circumstance to enjoy equal protection and security in their life, their liberty, and their property and to bear no greater burdens than are imposed on others under like circumstances.

**Nonconforming Use:** A use that lawfully existed prior to the enactment of a zoning ordinance, and that is maintained after the effective date of the ordinance, although it does not comply with the zoning restrictions applicable to the district in which it is situated, is commonly referred to as a "nonconforming use."<sup>97</sup>

**Police Power:** The power that resides in each state to establish laws to preserve public order and tranquility and to promote the public health, safety, morals, and other aspects of the general welfare.

**Preemption:** A doctrine based on the Supremacy Clause of the U.S. Constitution that holds that certain matters are of such national, as opposed to local, character that federal laws preempt or take precedence over state laws on such matters. As such, a state may not pass a law inconsistent with the federal law. The doctrine of *state law* preemption holds that a state law displaces a local law or regulation that is in the same field and is in conflict or inconsistent with the state law.<sup>98</sup>

**Public Nuisance:** At common law "public nuisance" generally consists of "an unreasonable interference with a right common to the general public, including activities injurious to the health, safety, morals or comfort of the public."<sup>99</sup>

**Zoning Enabling Statute:** State legislation "authorizing local governments to engage in planning and the regulation of activity on private land."<sup>100</sup>

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<sup>97</sup> PATRICIA E. SALKIN, AMERICAN LAW OF ZONING § 12:1 (5th ed. 2010).

<sup>98</sup> Article VI, Section 2, of the U.S. Constitution, commonly referred to as the "Supremacy Clause," provides that the "Constitution, and the Laws of the United States ... shall be the supreme Law of the Land."

<sup>99</sup> ZONING AND LAND USE CONTROLS § 16.02[2].

<sup>100</sup> See ZONING AND LAND USE CONTROLS, Ch. 1, Introduction and User's Guide § 1.02[2] (LexisNexis Matthew Bender) (hereinafter "ZONING AND LAND USE CONTROLS").

**Plantation City  
Council Meeting  
Agenda**

**Notice of City  
Council Meeting**

**Wednesday, January 23, 2019 ~ 6:00 PM**



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City of Plantation  
City Hall

**Subject:**

Resolution approving the Kateleiva Site Data Record located at 561 S. Old Hiatus Road.  
(PP18-0022)

**Summary:**

A RESOLUTION APPROVING THE KATELIEVA PARCEL SITE DATA RECORD.

**ATTACHMENTS:**

<b>Description</b>	<b>Upload Date</b>	<b>Type</b>
Staff Report	1/16/2019	Cover Memo
Aerial Map	1/16/2019	Backup Material
Zoning Map	1/16/2019	Backup Material
Resolution	1/14/2019	Resolution Letter
Applicant's Submittal - Documents	1/14/2019	Presentation
Applicant's Submittal - Document	1/16/2019	Presentation
Applicant's Submittal - Documents	1/16/2019	Presentation
Applicant's Submittal - Plan	1/14/2019	Presentation
Applicant's Submittal - Plan	1/14/2019	Presentation
Applicant's Submittal - Plan	1/14/2019	Presentation