



Date: 05/18/2021		AGENDA ITEM				Item: 04	
<input checked="" type="checkbox"/> Ordinance		<input type="checkbox"/> Resolution		<input type="checkbox"/> Budget Resolution		<input checked="" type="checkbox"/> Other	
County Goals							
<input type="checkbox"/>	Thriving Communities	<input type="checkbox"/>	Economic & Financial Vitality	<input type="checkbox"/>	Excellence In Government	<input checked="" type="checkbox"/>	NA
Department: Growth And Resource Management Division: Building and Zoning							
Subject: Council direction concerning whether to amend the code of ordinances to permit short term rentals and direction concerning the Ad Hoc Short Term Rental Committee							
Clay Ervin Director Growth and Resource Management  Department Approval				Legal Michael Dyer County Attorney 		County Manager's Office Aaron Van Kleeck Proxy For Ryan Ossowski, Chief Financial Officer	
Kerry A. Leuzinger Division Approval				Approved as to Form and Legality			
Council Action:							
Modification:							
Account Number(s): NA Total Item Budget: NA							
Staff Contact(s):				Phone:		Ext.	
Clay Ervin				386 822 5013		12000	
Russ Brown				386 736 5950		12947	
Summary/Highlights: At the March 3, 2021, meeting, the County Council, after presentation by staff, directed staff to monitor proposed legislation concerning vacation or short term rentals through the 2021 legislative session term and update the Council at the end of the legislative session concerning legislative changes affecting vacation rentals. The Florida Legislature did not pass vacation rental legislation during the 2021 legislative term that ended on April 30. At the May 4, 2021, Council meeting, the County Council directed staff generate an agenda item for it to decide whether to proceed with amendments to the County's short term rental ordinance and whether to proceed with the ad hoc committee. As previously presented to Council on March 3, 2021, Volusia County regulates "short term" or "vacation" rentals through the definition of a hotel/motel in the County of Volusia, Code of Ordinances (Code). The Code permits hotels/motels in the B-6 (Highway Interchange Commercial) Classification, B-7 (Commercial Marina) Classification, B-8 (Tourist) Classification, Airport Property (AP) Classification, Osteen Commercial Village (OCV)							

Classification, Osteen Mixed Village (OMV) Classification, and the Southwest Activity Center Commerce (SWC) Classification. The B-4 (General Commercial) Classification permits a hotel/motel upon approval of a special exception application. Also, Planned Unit Developments (RPUD, MPUD, BPUD, and PUD) may allow for hotel/motel use by Council approved development agreement. A hotel/motel is prohibited in all other zoning categories, including residential zoning categories, because hotel/motel is not listed as a permitted use or structure in any other zoning category.

Florida Statute Sec. 509.032(7)(b) preempts a local ordinance from prohibiting vacation rentals or regulating the duration or frequency of rental of vacation rentals unless the local ordinance was adopted before June 1, 2011. The Code's definition for hotel/motel was last modified to its current form on December 16, 2004. As such, the County's regulation of vacation rentals is not preempted by Florida law because it was adopted before June 1, 2011. The Florida Attorney General has opined that any new ordinance provisions or changes to the Code are preempted by Florida law if the new ordinance or changes to the Code would regulate the duration or frequency of rental of vacation rentals. This would apply even when a regulation would be considered less restrictive than the prior local law.

Although the County could no longer regulate the duration and frequency of vacation rentals if the Code is changed to allow vacation rentals, the County may continue to regulate the secondary effects of vacation rentals such as noise, parking, solid waste, and lighting. Also, additional regulations regarding secondary effects could be enacted to address further issues such as life safety, requiring a local point of contact, and other similar issues that are not related to frequency or duration of vacation rentals. The ability of local governments to regulate secondary effects was also a subject of vacation rental legislation which again did not pass this legislative session.

If Council decides to change the Code to allow vacation rentals, the draft example ordinance adds language to the definition of hotel/motel to clarify that vacation or short term rental of residential property (single-family homes, duplexes, townhomes, residential condominiums) is not considered a hotel/motel use. This change would be an amendment to the zoning ordinance so the amendment has to be reviewed by the Planning and Land Development Review Committee (PLDRC). After PLDRC review, the ordinance change will require two readings at County Council meetings because the change amends the permitted uses allowed in the zoning classifications.

Staff seeks direction as to whether the Council elects to amend its zoning code to allow short term rentals within unincorporated residential zoning classifications and Council direction concerning the Ad Hoc Short Term Rental Committee.

Recommended Motion: Direction.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

ORDINANCE 2021-XX

AN ORDINANCE OF THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE COUNTY OF VOLUSIA; AMENDING SECTION 72-2 DEFINITIONS; AMENDING THE DEFINITION OF HOTEL/MOTEL TO EXCLUDE SINGLE FAMILY, MANUFACTURED MODULAR, MOBILE, TWO-FAMILY, TOWNHOME, AND MULTIFAMILY DWELLINGS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING ORDINANCES; AUTHORIZING INCLUSION IN CODE; PROVIDING FOR PROSPECTIVE APPLICATION; AND PROVIDING AN EFFECTIVE DATE.

RECITALS AND LEGISLATIVE FINDINGS

WHEREAS, from time to time land development regulations may be amended by the Volusia County Council ("Council"); and

WHEREAS, Chapter 72 of the Code or Ordinances, County of Volusia has a definition of hotel/motel in existence prior to June 1, 2011, that regulates and prohibits vacation rentals of a certain duration in residential zoning classifications; and

WHEREAS, the Council hereby determines that vacation rentals, as classified by Section 509.242(c), Florida Statutes, should now, prospectively, be a permitted use for residential activity in the unincorporated areas of Volusia County; and

WHEREAS, the purpose of this amendment is to exclude from the definition of hotel/motel the rental of residential dwellings of any duration or frequency; and

WHEREAS, nothing in this ordinance is intended to waive any other requirement of any local, state, or federal rule or regulation; and

WHEREAS, the notice and hearing procedures of Section 125.66(4)(b), Florida Statutes, have been met.

BE IT ORDAINED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, AS FOLLOWS:

(Words in ~~strike-through~~ type are deletions; words in underscore type are additions.)

1 **SECTION 1:** AMENDMENT - Section 72-2 of the Code of Ordinances, County of

2 Volusia, is hereby amended to read, in pertinent part, as follows:

3 Sec. 72-2. - Definitions.

4
5 ...

6 *Hotel/motel:* A building or group of buildings in which sleeping accommodations and
7 sanitary facilities are offered to the public and intended for rental to transients with daily,
8 weekly or seasonal charge. A transient lodging facility is distinguished from multifamily
9 dwellings (apartments) where rentals are for periods of a month or longer and occupancy is by
10 residents rather than transients. It is synonymous with "motel," "boatel," and "tourist homes or
11 cabins." For purposes of this definition, the term hotel/motel does not include single family,
12 manufactured modular, mobile, two-family, townhome, or multifamily dwellings offered for rent
13 for periods of less than a month in residential zoning classifications.

14
15 ...

16
17 **SECTION 2:** SEVERABILITY - Should any word, phrase, sentence, subsection or
18 section be held by a court of competent jurisdiction to be illegal, void, unenforceable, or
19 unconstitutional, then that word, phrase, sentence, subsection or section so held shall be
20 severed from this ordinance and all other words, phrases, sentences, subsections, or sections
21 shall remain in full force and effect.

22 **SECTION 3:** CONFLICTING ORDINANCES - All ordinances, or part thereof, in conflict
23 herewith are, to the extent of such conflict, repealed.

24 **SECTION 4:** AUTHORIZING INCLUSION IN CODE. The provisions of this ordinance
25 shall be included and incorporated into the Code of Ordinances of the County of Volusia, as
26 additions or amendments thereto, and shall be appropriately renumbered to conform to the
27 uniform numbering system of the Code.

28 **SECTION 5:** PROSPECTIVE APPLICATION. The provisions in this ordinance apply
29 prospectively after the effective date of this ordinance without retroactive application.

SECTION 6: EFFECTIVE DATE. This ordinance shall take effect upon electronic filing of a certified copy with the Department of State.

ADOPTED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, IN OPEN MEETING DULY ASSEMBLED IN THE COUNTY COUNCIL CHAMBERS AT THE THOMAS C. KELLY ADMINISTRATION CENTER, 123 WEST INDIANA AVENUE, DELAND, FLORIDA, THIS ____ DAY OF _____, 2021.

ATTEST:

COUNTY COUNCIL
VOLUSIA COUNTY, FLORIDA

George Recktenwald
County Manager

Jeffrey S. Brower
County Chair



Inter-Office Memorandum

To: Mike Dyer, County Attorney
From: Russ Brown, Asst. County Attorney
Date: November 20, 2020
Re: County's Regulation of "Short Term" or "Vacation" Rentals

Overview

Volusia County regulates "short term" or "vacation" rentals through the definition of a hotel/motel in the Code of Ordinances (Code) which was last modified to its current form on December 16, 2004. Florida Statute §509.032(7)(b) preempts a local ordinance from prohibiting vacation rentals or regulating the duration or frequency of rental of vacation rentals unless the local ordinance was adopted before June 1, 2011. The County's zoning scheme for regulating short term rentals was previously upheld in court and other recent court decisions have upheld similar zoning enforcement mechanisms. Amending the County's zoning enforcement mechanism with new provisions regulating the duration or frequency of short term or vacation rentals would result in preemption, even if the amendments were "less restrictive" than the prior ordinance.

Summary

County's Enforcement Mechanism for Short Term Rentals

The Code provides a list of permitted uses and structures within each zoning classification and expressly prohibits any other use or structure. Section 72-172 provides that "[i]f a use or structure is not expressly permitted in any classification, the enforcement official shall not permit such use or structure in the classification unless it is substantially similar to a use or structure

otherwise permitted in the classification.” Unless a use or structure is expressly permitted within a zoning classification, it is prohibited.

The Code, Section 72-2 defines hotel/motel:

A building or group of buildings in which sleeping accommodations and sanitary facilities are offered to the public and intended for rental to transients with daily, weekly or seasonal charge. A transient lodging facility is distinguished from multifamily dwellings (apartments) where rentals are for periods of a month or longer and occupancy is by residents rather than transients. It is synonymous with “motel,” “boatel,” and “tourist homes or cabins.”

The Code only permits hotel/motels in the B-6 (Highway Interchange Commercial) Classification, B-7 (Commercial Marina) Classification, and B-8 (Tourist) Classification. The B-4 (General Commercial) Classification permits hotel/motels upon approval of a special exception application. As such, short term rentals are expressly permitted in the B-6, B-7, and B-8 zoning categories and by approved application in B-4 zoning. Because hotels/motels are not listed as a permitted use or structure in any other zoning category, they are prohibited by Volusia County’s Code in all other zoning categories.

The current hotel/motel definition was last modified on December 16, 2004. Florida Statute §509.032(7)(b) preempts a local ordinance from prohibiting vacation rentals or regulating the duration or frequency of rental of vacation rentals unless the local ordinance was adopted before June 1, 2011. The County’s regulation of short term or vacation rentals is not preempted by the Florida Statute because it was adopted before June 1, 2011. While a residential home located in a zoning category that permits hotel/motel would not be cited for “a use where not permitted,” the “change in use” from residential activity to commercial activity can invoke new requirements under the Florida Building Code and the Florida Fire Prevention Code, both adopted in the County’s Code, which can be enforced through the code enforcement process.

Relevant Court Cases and Florida Attorney General Opinions

The County's zoning enforcement of "short term" or "vacation" rentals under the Code's definition of hotel/motel was previously upheld in court. In *Scully v. County of Volusia*, No. 2008-11744CIDL (Fla. 7th Cir. Ct. Nov. 22, 2010), single-family residential property owners appealed a final order imposing a fine after the County Code Enforcement Board determined the property owners violated of the County's zoning code by operating a hotel/motel where not permitted in the R-9 Zoning Classification. In *Scully*, the Court concluded that "[t]he Board properly applied the prohibition of the use of hotels/motels in a single-family zoning classification in finding Appellants in violation of the Zoning Code."

Other court cases have upheld similar short term rental zoning enforcement schemes. A lawsuit was brought against Hillsborough County challenging the way that County prohibited short term or vacation rentals. In *Khoyi v. Hillsborough County*, 28 Fla. L. Weekly Supp. 376c (Fla. 13th Cir. Ct. 2020), the court upheld the Hillsborough County's zoning code finding that, although the Hillsborough County code did not expressly define or prohibit short term or vacation rentals in a residential zoning category, the code defined a permitted dwelling unit as a residence that may be rented on a weekly or longer basis and any rental of less than a week in a residential zoning prohibiting such use was a violation of the Hillsborough County Code. Hillsborough's Code is similar to Volusia's Code in this aspect.

In *Synk et al., v. City of Daytona Beach*, No. 2017-31231 CICI (Fla. 7th Cir. Ct. May 14, 2019), the City of Daytona Beach was sued by four property owners, who admitted to renting their properties as short term rentals, claiming that the City's new Land Development Code's (LDC) rezoning of their property into the new Single Family Residential District was preempted under Florida's short term rental statute. The Court entered summary judgment for the City finding that the property owners were always prohibited from renting their properties as short term rentals

under the City’s previous LDC and that the City had not enacted a new ordinance for short term rentals that would be preempted under Florida law. Rather, the Court stated that the City merely continued forward with its previous short term rental prohibition from its old LDC to the new LDC and this continuation did not violate Florida law. Notably, the City’s Code, similar to Volusia County’s Code, states “[n]o use shall be established or maintained in any zoning district except as specifically permitted by the LCD.” The Court cited to the above provision in its opinion as clear evidence that the City did not permit short term rentals in the residential zoning districts.

The Florida Attorney General provided several opinions on short term or vacation rentals. The opinions state that new ordinance provisions are preempted if they revise an ordinance in a manner that would regulate the duration or frequency of rental of vacation rentals, even when such regulation would be considered “less restrictive” than the prior local law. See *Op. Att’y Gen. Fla.* 2020-05 (2020) and *Op. Att’y Gen. Fla.* 2019-07 (2019).

Conclusion

The County’s Code prohibits short term or vacation rentals in all residential zoning categories through the Code’s definition of hotel/motel. The County’s regulatory zoning scheme has been upheld in Court and similar local government zoning schemes prohibiting short term rentals have also been upheld as lawful in court cases. Amendment to the County’s existing short term rental ordinance would be preempted by Florida Statute §509.032(7)(b). The Council’s opportunity to regulate would then be limited to the secondary effects of vacation rentals – such as noise, parking, and safety.



Inter-Office Memorandum

To: County Council Members

From: Mike Dyer, County Attorney
Paolo S. Soria, Sr. Asst. County Attorney

CC: George Recktenwald, County Manager
Suzanne Konchan, Deputy County Manager
Clay Ervin, Growth and Resource Management Director

Date: May 5, 2021

Subject: Process for amending short term rental ordinance

The process for amending county zoning codes is regulated by state law. The County's short term rental restrictions are within the zoning code. Below is a summary of the amendment process.

Summary

Because a repeal of current rental restrictions changes the permitted uses within residential zoning classifications, a proposed ordinance must be considered at three (3) public hearings, along with public comment and input. These hearings must meet the following notice requirements:

- Hearing before the County's Planning and Land Development Regulation Commission (PLDRC) with 10 days' notice.
- First hearing before county council with 7 days' notice.
- Second and final hearing before the Council with 5 days' notice (at least 10 days apart from the first hearing).
 - One of the Council hearings must be after 5 p.m., unless waived by the Council. Waiver of this requirement is common.

Explanation

The County's land development regulations are found within chapter 72 of its Code of Ordinances (Code). Land development regulations are ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations controlling the development of land. Fla. Stat. § 163.3164(26). Land development regulations are statutorily required to follow a certain procedure for approval and be consistent with the comprehensive plan.

The PLDRC is the County's designated Local Planning Agency and Land Development Regulation Commission pursuant to Section 163.3164, F.S. Other local governments may refer to their PLDRC as a planning commission. The PLDRC is required to review proposed land development regulations, land development codes, or amendments thereto, and make recommendations to the governing body as to the consistency of the proposal with the adopted comprehensive plan, or element or portion thereof. Fla. Stat. § 163.3174(5).

All meetings of the PLDRC are public hearings, and are required to provide *due public notice* of the PLDRC hearing with publication at least once in a newspaper of general circulation in the area at least ten days prior to the date of the public hearing. Sec. 72-2, of the Code. The PLDRC meets monthly and its next meeting is on June 17, 2021. The recommendation of the PLDRC is forwarded to County Council.

The Council is the governing body with legislative authority over enacting ordinances establishing or amending land development regulations. Section 125.66, F.S., provides the enactment procedure of county ordinances. Section 125.66(4)(b) provides a more stringent process for land development regulation ordinances that change the actual list of permitted, conditional, or prohibited uses within a zoning category – such as repealing short term rental restrictions. This process involves:

- County Council must hold two advertised public hearings on the ordinance;
- One of the advertised hearings must be held after 5 p.m. on a weekday, unless a majority plus one vote of council elects to conduct a hearing at another time of day;
- The first hearing requires at least a 7 day published notice;

- The second hearing must be heard at least 10 days after the first and requires at least a 5 day published notice;
- The advertisements must meet minimum size, font, and type requirements;
- The advertisements must be display ads and cannot be placed in the areas where legal notices or classified advertisements appear;
- The advertisements must be placed in a newspaper of general paid circulation.

The effective date of the ordinance is when a certified copy is filed with the Department of State by the clerk of the county council within 10 days after enactment; however the ordinance may specify a different effective date. Fla. Stat. § 125.66(2)(b).

Draft Ordinance

For discussion purposes, attached is a draft ordinance which would repeal the County's short term rental restrictions.

Please contact us if you have any questions.

SHORT TERM RENTAL – DRAFT ORDINANCE AND AD HOC SHORT TERM RENTAL COMMITTEE DISCUSSION AND DIRECTION

County Council Direction



2

- At the March 3, 2021, Council meeting, the County Council, after presentation by staff, directed staff to monitor proposed legislation concerning vacation or short term rentals through the 2021 legislative session term and update the Council at the end of the legislative session concerning legislative changes affecting vacation rentals.
- The Florida Legislative session did not pass vacation rental legislation during the 2021 legislative term that ended April 30, 2021.
- At the May 4, 2021, Council meeting, the County Council directed staff to again present at the May 18 County Council meeting the previously proposed draft ordinance that would permit vacation rentals in the unincorporated for County Council decision and direction on whether to proceed in implementing a draft ordinance to permit vacation rentals in the incorporated portion of the county.

Current Regulations



3

- **In unincorporated Volusia County the use of residential homes for short term rental is currently classified as hotels/motels**
 - Hotel/motel: A building or group of buildings in which sleeping accommodations and sanitary facilities are offered to the public and intended for rental to transients with daily, weekly or seasonal charge. A transient lodging facility is distinguished from multifamily dwellings (apartments) where rentals are for periods of a month or longer and occupancy is by residents rather than transients. It is synonymous with "motel," "boatel," and "tourist homes or cabins." (Section 72-2, Code of Ordinance, Volusia County, Florida)
- This definition has been in effect since the adoption of Ordinance 2004-20 on **December 16, 2004.**
 - The 2004 amendment added the "month or longer", i.e, 30-day, term to language that was in the code since 1988.

How does the definition of hotel/motel as a use impact short term rental of residential properties?

1. The county's zoning ordinance establishes specific classifications for residential, commercial, office, industrial, agricultural and public uses.
2. The various zoning classifications identify uses that are allowed by right or by approval of special exception. A property cannot be developed/occupied by a use if is not expressly permitted by right or special exception within a zoning classification.
3. Short-term rentals of residential structures for periods of under 30 days has been determined to be a "hotel/motel" use.
4. Hotel/motel uses are not allowed in all of the residential zoning classifications.

Current Regulations



5

Zoning classifications that allow the hotel/motel use:

□ Permitted Principal Use:

Airport Property (AP)

Osteen Commercial Village (OCV)

Heavy Commercial (B-6)

Osteen Mixed Village (OMV)

Tourist (B-8)

Southwest Activity Center Commerce (SWC)

Marina Commercial (B-7) – allows for hotel/motel use ancillary to principal water-dependent use

□ Permitted Special Exception Use: (Would require public hearings in order to be granted the use)

General Commercial (B-4)

□ Planned Unit Developments (RPUD, MPUD, BPUD, PUD) may allow for hotel/motel use by Council approved development agreement.

DRAFT ORDINANCE



6

- *Hotel/motel:* A building or group of buildings in which sleeping accommodations and sanitary facilities are offered to the public and intended for rental to transients with daily, weekly or seasonal charge. A transient lodging facility is distinguished from multifamily dwellings (apartments) where rentals are for periods of a month or longer and occupancy is by residents rather than transients. It is synonymous with "motel," "boatel," and "tourist homes or cabins." For purposes of this definition, the term hotel/motel does not include single family, manufactured modular, mobile, two-family, townhome, or multifamily dwellings offered for rent for periods of less than a month in residential zoning classifications.

Effect of amending the code

7

■ Florida Statutes Chapter 509

- A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before **June 1, 2011** (Section 509.032(7)(b), Florida Statutes, Laws of Florida)

Source: <http://www.leg.state.fl.us/Statutes>

- Volusia County's ordinance is grandfathered under this statute because its ordinance was adopted prior to June 1, 2011

Effect of amending the code

8

- State law limits the Council's flexibility on amending current ordinance due to preemption statute
 - ▣ The preemption applies to any modifications to local regulations pertaining to frequency or duration of rental
- According to the courts and Florida Attorney General, once the county formally ceases enforcement or otherwise amends or modifies the “grandfathered” portion of the code, then the preemption by the state is applied
 - ▣ For example, changing the current rental duration period limit to be more or less restrictive would render the ordinance unenforceable

Options to allow for short term rentals (cont.)



9

- Repealing the current short term rental ordinance would remove restrictions on the duration or frequency in the following zoning classifications:

FR	Forestry Resource
RC	Resource Corridor
A-1	Prime Agriculture
A-2	Rural Agriculture
A-3	Transitional Agriculture
A-4	Transitional Agriculture
RR	Rural Residential
RA	Rural Agricultural Estate
R-1	Urban Single-Family Residential
R-2	Urban Single-Family Residential
R-3	Urban Single-Family Residential
R-4	Urban Single-Family Residential
R-5	Urban Single-Family Residential

R-6	Urban Two-Family Residential
R-7	Urban Multifamily Residential
R-8	Urban Multifamily Residential
R-9	Urban Single-family Residential
MH-1	Mobile Home Park
MH-3	Rural Mobile Home
MH-4	Rural Mobile Home
MH-5	Urban Mobile Home
MH-6	Urban Mobile Home Subdivision
MH-7	Mobile Home Park
MH-8	Rural Mobile Home Estate
PUD	Planned Unit Development

B-8	Tourist Commercial
OCV	Osteen Commercial Village
OMV	Osteen Mixed Use Village
OUR	Osteen Urban Residential
OTR	Osteen Transitional Residential
ORE	Osteen Rural Estate
OCR	Osteen Cluster Residential
SWC	Southwest Activity Center Commerce
SWR	Southwest Activity Center Community

Options to allow for short term rentals (cont.)



10

- However, the County could limit regulations to the secondary effects that include noise, light, parking and solid waste.
 - ▣ These are enforced via the code enforcement process.
- Currently, additional regulations regarding secondary effects MAY be enacted that address life safety, local point of contact and similar issues that are not related to frequency or duration.

- Council direction/decision to staff on the draft ordinance to repeal current short term rental restrictions
 - ▣ Modifies definition of hotel/motel to remove rental limits in single family, duplexes, townhomes and residential condominiums within unincorporated area
 - Zoning amendments must be reviewed by the Planning and Land Development Review Committee (PLDRC) at a duly notice public hearing
 - The County Council would review it at the meeting after the PLDRC, subject to notice deadlines
 - Zoning amendment requires two readings since it amends the permitted uses allowed in the zoning classifications
- Council direction concerning Ad Hoc Short Term Rental Committee

