



Walton County Planning and Development Services

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MEMORANDUM

To: Walton County Planning Commission

Project Manager: Kristen Shell, AICP, Planning Manager

Meeting Date: September 14, 2021

Project: Short Term Vacation Rental Legislation

Applicant: Walton County Planning and Development Services Department

Request: Update and Request to Hold Workshops / Stakeholder Meetings

1) Summary & Background

- a. On July 27, 2021 the Board of County Commissioners took the following action (4-0) excerpted from the meeting minutes:

“Commissioner Glidewell addressed the long-term problem with monster homes. He spoke about the problems and impacts they create. He proposed instructing the Planning Director and Legal to draft an enforceable ordinance limiting occupancy to be brought back in a month.

Motion by Commissioner Glidewell, second by Commissioner Barker, to instruct the Planning Director and Legal to draft an enforceable ordinance limiting occupancy to be brought back in a month.

Further discussion was held regarding the problems. Several individuals spoke about issues that create the problems and suggestions to include in the ordinance that may help correct the problems.”

- b. Staff has conducted research into what requirements and regulations other jurisdictions have implemented. Some of the identified issues with short term rental units are: 1)

incompatibilities with existing neighborhood or residential context; 2) competition with traditional long term leases; 3) potentially causing some supply issues with long term housing in certain markets where short term rentals are a construction priority. Various local governments across the Country have taken different regulatory approaches to address some of these issues.

- c. Incompatibilities with single family neighborhoods include nuisances (excessive trash and noise), parking in undesigned areas, blocking emergency ingress and egress, backed up traffic at entry gates, and constant turnover of occupants, materially affecting the character of the neighborhood.
- d. In 2011 the Florida Legislature essentially preempted non home rule local government regulation of short term rentals:
 - i. No restriction on use or any prohibition of vacation rentals, and no treatment of them based on their classification, use or occupancy. If a community wanted to regulate them, they would essentially have to fall under a program that regulated all types of rentals, e.g., landlord licensing programs.
 - ii. The preemption prevented local governments from enacting any law, ordinance, or regulation that: restricted the use of vacation rentals; prohibited vacation rentals; or regulated vacation rentals based solely on their classification, use, or occupancy.
 - iii. No mandatory inspections of vacation rentals by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation (“DBPR”) for compliance with state regulatory requirements. See, Fla. Stat. § 509.032(2)(a).
 - iv. DBPR regulations allowed up to 75 homes to be on one collective license and to be indexed under only the first named property location.
 - v. The occupancy limit was one person for 150 gross square feet. Twenty visitors could occupy a 3,000 square foot house and the square footage could be computed by including enclosed garages or other spaces. Rooms were converted into bedrooms, some without permits and without meeting Life Safety requirements.
- e. In 2014, the Legislature restored some authority back to local governments so they could address many of the problems they were seeing in their communities relating to parking, noise, trash and life-safety issues. This legislation left in place existing statutory language stating that cities cannot “prohibit” short-term rentals or regulate the duration or frequency of the rental (Florida League of Cities). This amendment accomplished the following:
 - i. The definition of a vacation rental, sometimes called short term vacation rental or a resort dwelling, did not change. See, Fla. Stat. § 509.013(4)(a).
 - ii. “Vacation rentals” are a type of “transient public lodging establishment” which are rented to guests more than three times in a calendar year for periods of less

than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

- iii. DBPR standards did not substantially change.
- iv. Section 509.032(7)(a), F.S., provides that “the regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state.”
- v. Current law does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206, F.S.13
- vi. Section 509.032(7)(b), F.S., prohibits local laws, ordinances, or regulations that prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. However, this prohibition does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

The exact pre-emption language from Section 509.032, F.S. is as follows:

(7) PREEMPTION AUTHORITY.—

(a) The regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state.

This paragraph does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.

(b) 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.

(c) Paragraph (b) does not apply to any local law, ordinance, or regulation exclusively relating to property valuation as a criterion for vacation rental if the local law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.

- f. The Division of Hotels and Restaurants within the Department of Business and Professional Regulation is the State agency charged with enforcing the provisions of Ch. 509, F.S., relating to the regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. The term “public lodging establishments” includes transient and nontransient public lodging establishments. The principal differences between transient and nontransient public lodging establishments are the number of times that the establishments are rented in a calendar year and the duration of the rentals.

A “**transient public lodging establishment**” is defined in s. 509.013(4)(a)1., F.S., as: any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is **rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less**, or which is advertised or held out to the public as a place regularly rented to guests.

A “**nontransient public lodging establishment**” is defined in s. 509.013(4)(a)2., F.S., as: any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is **rented to guests for periods of at least 30 days or 1 calendar month, whichever is less**, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

Section 509.013(4)(b), F.S., exempts the following types of establishments from the definition of “public lodging establishment”:

1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors.
2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place regulated under s. 381.0072, F.S.;
3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients;
4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent;
5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008-381.00895, F.S.;
6. Any establishment inspected by the Department of Health and regulated by ch. 513 F.S.;
7. Any nonprofit organization that operates a facility providing housing only to patients, patients’ families, and patients’ caregivers and not to the general public.
8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department’s behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement; and

9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242, F.S.
- g. Public lodging establishments are classified as a hotel, motel, vacation rental, nontransient apartment, transient apartment, bed and breakfast inn, or timeshare project.

A “vacation rental” is defined in s. 509.242(1)(c), F.S., as: any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but is not a timeshare project.

- h. The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation licenses vacation rentals as condominiums, dwellings, or timeshare projects. The Division may issue a vacation rental license for “a single-family house, a townhouse, or a unit or group of units in a duplex, triplex, quadruplex, or other dwelling unit that has four or less units collectively.” The Division does not license or regulate the rental of individual rooms within a dwelling unit under the rooming house and boardinghouse exclusion from the definition of public lodging establishment under s. 509.013(4)(b)9., F.S.
- i. **State Inspections:** The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation must inspect each licensed public lodging establishment at least biannually, but must inspect transient and nontransient apartments at least annually. However, the division is not required to inspect vacation rentals, but vacation rentals must be available for inspection upon a request by the division. The division conducts inspections of vacation rentals in response to a consumer complaint

The Division’s inspection of vacation rentals includes matters of safety (for example, fire hazards, smoke detectors, and boiler safety), sanitation (for example, safe water sources, bedding, and vermin control), consumer protection (for example, unethical business practices, compliance with the Florida Clean Air Act, and maintenance of a guest register), and other general safety and regulatory matters. The division must notify the local firesafety authority or the State Fire Marshal of any readily observable violation of a rule adopted under ch. 633, F.S.,¹⁰ which relates to a public lodging establishment.

Additionally, an applicant for a vacation rental license is required to submit with the license application a signed certificate evidencing the inspection of all balconies, platforms, stairways, railings, and railways, from a person competent to conduct such inspections.

j. Attorney General Opinions

The office of the Attorney General issued an Informal Legal Opinion on October 22, 2013, regarding whether Flagler County could intercede and stop vacation rental operations in private homes that were zoned, prior to June 1, 2011, for single-family residential use. According to the opinion, “due to an increase in the number of homes being used as vacation rentals in Flagler County, many permanent residents in neighborhoods with vacation rentals have raised concerns about the negative effects such rentals have on their quality of life and the character of their neighborhood.” Flagler County had no regulation governing vacation rentals before the grandfather date of June 1, 2011, in s. 509.032(7)(b), F.S. The Attorney General concluded that the county’s local zoning ordinance for single-family homes that predated June 1, 2011, did not restrict the rental of such property as a vacation rental and that the zoning ordinances could not now be interpreted to restrict vacation rentals.

The Attorney General also issued an opinion on November 13, 2014, to the City of Wilton Manors, concluding that s. 509.032(7)(b), F.S., does not permit the city to regulate the location of vacation rentals through zoning, and the city may not prohibit vacation rentals that fail to comply with the registration and licensing requirements in s. 509.241, F.S., which requires public lodging establishments to obtain a license from the division.

In addition, the Attorney General issued an advisory opinion on October 5, 2016, addressing whether a municipality could limit the spacing and concentration of vacation rentals through a proposed ordinance regarding vacation rentals. The Attorney General concluded that the preemption in s. 509.032, F.S., allows local governments some regulation of vacation rentals, but prevents local governments from prohibiting vacation rentals. Consequently, the Attorney General noted that a municipality may not impose spacing or proportional regulations that would have the effect of preventing eligible housing from being used as a vacation rental.

The Attorney General also opined that amending an ordinance that was enacted prior to June 1, 2011 will not invalidate the grandfather protection for the parts of the ordinance that are reenacted. The new provisions would be preempted by state law if they revise an ordinance in a manner that would regulate the duration or frequency of rental of vacation rentals, even when the new regulation would be considered “less restrictive” than the prior local law.

Primary Sources:

Short Term Vacation Rentals: The Getaway that Got Away! Florida Association of County Attorneys 2015 Continuing Education Legal Education Program June 17-18, 2015 – Al Hadeed County Attorney Flagler County Florida.

2) Proposed Ordinance

- a. The Walton County Land Development Code currently allows short term vacation rentals in any zoning district where single family residential uses are permitted. Such units are currently not designated as single family homes within Walton County.
- b. The proposed ordinance will need to consider the administrative procedures related to any additional short term rental regulation. This includes staffing requirements as well as organizational processes and procedures necessary to implement.
- c. Staff is recommending the creation and implementation of a Short Term Rental Vacation Certificate program. Such program would establish minimum requirements such as: Obtaining a Florida Department of Revenue certificate of registration for purposes of collecting and remitting tourist development taxes, sales surtaxes, and transient rental taxes; Obtaining a Florida Department of Business and Professional Regulation license as a transient public lodging establishment; and maintaining initial and ongoing compliance with the Short-term Vacation Rental Standards to be placed in the Walton County Land Development Code plus any other applicable local, state, and federal laws, regulations, and standards to include, but not be limited to, Chapter 509, Florida Statutes, and Rule Chapters 61C and 69A, Florida Administrative Code.
- d. The Short Term Vacation Rental Certificate program could also establish occupancy limits based on the ability of the structure and site to safely accommodate and park occupants. Alternatively, a standard occupancy maximum could be imposed without regard for the site/structure. Under the occupancy by site/structure approach, occupancy limiting factors could be based on available parking at a revised rate of one space per three occupants, on-site sewage treatment system limitations, and other life safety factors associated with the structure. Potential requirements of the ordinance could be:
 - Minimum life safety requirements and Initial and routine life safety inspections;
 - The designation of a local responsible party;
 - Minimum rental / lease agreement inclusions and requirements;
 - Required posting of minimum vacation rental unit information such as: the maximum occupancy of the unit, the maximum number of vehicles which can be parked at the unit, trash collection requirements, quiet hours, sea turtle information, and beach safety system information among other requirements;
 - Remedy and enforcement provisions; and
 - Vesting provisions.

- e. Unintended consequences must also be considered such as the potential for any such ordinance to accelerate redevelopment of older cottages or homes or the potential for any such ordinance to accelerate multi-family redevelopment of existing single family structures.
- f. Other considerations should be related to the potential for legal challenge as well as the potential for future preemption by the Florida Legislature.

3) Next Steps

- a. Publish the draft ordinance.
- b. Conduct stakeholder review and meetings as well as schedule and conduct a public workshop on the proposed ordinance. Stakeholders should include local first responders, Walton County Building Department and Code Enforcement staff, representatives from the vacation rental industry, and representatives from local neighborhoods at a minimum. Feedback from these meetings and workshops may be used to improve upon the draft ordinance. These meetings will be tentatively held in October of 2021.
- c. Schedule a public hearing before the Walton County Planning Commission and two subsequent public hearings (ordinance readings) before the Board of County Commissioners. These first of these two hearings could potentially take place at the November 11, 2021 Planning Commission and December 14, 2021 Board of County Commissioners meeting with the final adoption hearing occurring after the first of the year.