

1. Discussion Objective:

Work Session Date: April 01, 2013

To discuss Short Term Rental regulations.

2. Submitter of Information: Walter Fluegel, Community Development Director

- Council
- Town Staff
- Town Attorney

3. Estimated Time for this item: 30 minutes

5. Background: Town Council has requested an initial dialogue on regulation of Short Term Rentals. The attached memo, coauthored by the Town Attorney and Community Development Director, provides a brief summary overview on short term rental regulations.

| Town Manager | Town Attorney | Finance Director | Public Works Director | Community Development Director | Parks & Recreation Director | Town Clerk |
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Town of Fort Myers Beach

Memorandum

To: Mayor and Council

Through: Terry Stewart, Town Manager

From: Marilyn Miller, Town Attorney and
Walter Fluegel, Community Development Director

Date: March 19, 2013

RE: Short Term Rental Background Information for Town Council Workshop
Agenda, April 1, 2013

The regulation of short term rentals in residential neighborhoods can be traced back to the roots of the Town's Comprehensive Plan and Land Development Code. The genesis of the concept of regulating short term rentals is founded upon the belief that short term rentals are disruptive to the fiber of residential neighborhoods. There is, however, a fundamental difference in the perceptions of those with opposing views on how such regulations affect property rights. Those in favor of allowing unrestricted short term rentals, view it as a fundamental property right in order to have a reasonable expectation of return on their investment, while those who are against allowing short terms rentals view it as fundamental invasion on their right to peaceable enjoyment of their property.

Since incorporation, the Town has struggled to find a meaningful way to balance these competing interests, and to define a meaningful way to regulate short term rentals. The Town's Comprehensive Plan includes several policies that touch on the topic of short term rentals:

Policy 3-B-1 of the Community Design Element states: "The Town shall prepare and adopt land development code regulations to apply to older "near-town neighborhoods" that will encourage renovations and compatible infill development, using the following types of techniques: . . . iv. modifying current limitations on the number of guests and/or length of stays to protect residential areas from excessive intrusion by poorly regulated short-term rentals."

Policy 4-A-3 of the Future Land Use Element states: "The Town shall protect residential neighborhoods from intrusive commercial activities."

Policy 4-B-12 of the Future Land Use Element provides the following definition for Residential land use in the Town: "Residential uses include detached homes, accessory apartments, home

occupations, mobile homes, apartments, and condominiums, provided that no dwelling units are rented for periods shorter than one week.”

In 2003, the Town adopted the Land Development Code, which included provisions regulating Short-Term Rentals (attached as Exhibit A). These provisions are very difficult to enforce and, when enforced, could result in legal challenges as has occurred elsewhere around the State. Total prohibition of short term rentals assumes that those types of rentals in residential neighborhoods are always incompatible due to excessive noise, trash and increased vehicular traffic. Those opposed to such regulations argue that year round tenants can be just as much of a nuisance as some short term tenants. In addition, some landlords become very creative and devise ways to circumvent the restrictions.

In 2011, Council directed the drafting of an ordinance to address problems with the operation and maintenance of short term rentals. The ordinance, as proposed, would have required all residential properties that are leased or rented to members of the public for periods of six (6) months or less to register with the Town, pay an annual registration fee, and abide by certain posting and other requirements that are contained in the ordinance. Revenues realized from the annual registration fee will be utilized to fund inspection and enforcement efforts with respect to such rentals. The draft ordinance include provisions relating to occupancy limitations, and required posting, in each rental unit, of a notice concerning things such as the maximum occupancy, number of vehicles and trash pick up. That ordinance was withdrawn prior to public hearing.

Also in 2011, the Florida Legislature adopted amendments to Chapter 509 Florida Statutes relating to what are termed “vacation rentals.” “Vacation rentals” are defined in Section 509.242, Fla. Stat. 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.” “Transient public lodging establishment” is defined in Section 509.013, Fla. Stat. 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.” The 2011 amendments included a statement that the “regulation of public lodging establishments...is preempted to the state.” The amendments also include a statement that the preemption “...does not preempt the authority of a local government ... to conduct inspections of public lodging ... establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code.” Finally, the 2011 amendments include the following: “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.”

The 2011 amendments to Chapter 509, while preserving a local government’s right to maintain existing short term rental regulations, severely limits what a local government can do prospectively. The existing regulations enacted by the Town in 2003 can, therefore, remain in effect, but they cannot be substantially changed or amended, if in fact they can be amended at all.

DIVISION 32-A. SHORT-TERM RENTALS

Sec. 34-2391. Restrictions on weekly rentals in certain zoning districts.

Table 34-2 restricts the rental of any permitted dwelling unit in certain zoning districts to a single family during any one-month period, with a minimum stay of one week (see the "Restricted" sub-group of the "Lodging" use group in Table 34-1). The following exceptions apply to this restriction:

- (1) This restriction on weekly rentals does not apply to:
 - a. Any land between Estero Boulevard and the Gulf of Mexico.
 - b. Any land directly adjoining the bay side of Estero Boulevard.
 - c. Any dwelling unit that is recognized by the Town of Fort Myers Beach as having had pre-existing weekly rentals as of January 1, 2003, when registered in accordance with § 34-2392.
- (2) Dwellings units on property that qualifies for any of these exceptions may be rented to a single family for periods of one week or longer, without the once-per-month maximum that would otherwise have applied.

Sec. 34-2392. Registry of certain pre-existing weekly rentals.

(a) Dwelling units in certain zoning districts are not permitted to be rented to more than a single family during any one-month period due to restrictions found in Tables 34-1 and 34-2. The owner of any such dwelling unit that was being lawfully used for weekly rentals during the 12-month period prior to January 1, 2003, may apply for registration under this section to continue weekly rentals.

- (1) Upon verification by the town and placement of such dwelling units on a registry of pre-existing weekly rentals, the owners of registered dwelling units may continue to rent those units to a single family for periods of one week or longer, without the once-per-month maximum that would otherwise have applied.
- (2) This right shall run with the land and shall not be affected by the transfer of the property to subsequent owners.

- (3) If weekly rentals of a particular dwelling unit are terminated for any reason for any 12-month period, weekly rentals may not thereafter be reinstated in that dwelling unit.
- (4) Dwelling units on land that is not affected by the restrictions in Tables 34-1 and 34-2 limiting rentals to no more than a single family during any one-month period should not be submitted for registration. Such units will not be placed on the registry of pre-existing weekly rentals.

(b) Applications for annual registration of lawful pre-existing weekly rental units shall be submitted to the town manager by June 1, 2003. Each application must include:

- (1) Name of the applicant, if different than the property owner, and the applicant's mailing address and telephone number.
- (2) Name of current property owner (and previous owner, if property has been transferred since January 1, 2003).
- (3) Street address and STRAP number of parcel.
- (4) Number of rental dwelling units at that address that are part of the application.
- (5) Evidence of lawful pre-existing weekly rental use of each dwelling unit in the application as of January 1, 2003. Such evidence may include:
 - a. Evidence that each dwelling unit was licensed by the state of Florida as a "resort dwelling" or as a public lodging establishment, in accordance with F.S. § 509.241.
 - b. Evidence of regular payment of Lee County's 3% tourist development tax on rentals of each dwelling unit.
 - c. Evidence of regular payment of Florida's 6% sales tax on rentals of each dwelling unit.
 - d. Signed rental contracts or income tax returns.
- (6) A local telephone number with a contact that is available 24 hours a day.
- (7) Payment of an application fee established by the town.
- (8) Notarized signatures of the property owner (and the applicant, if different than the property owner) attesting to the truth and accuracy of all information submitted with the application and consenting to inspection of the premises at reasonable hours to

determine compliance with town and fire codes.

(c) The town manager will evaluate each application and notify applicants in writing within 60 days whether each dwelling unit is being registered with the town as a pre-existing weekly rental unit or whether the dwelling unit does not qualify for such registration. Reasons for disqualification will be stated in the written notice. All applications and written responses are public records and will be available for inspection at town hall.

(d) Decisions by the town manager pursuant to this subsection may be appealed to the town council by the applicant or adjoining property owner in accordance with § 34-86. In addition to the criteria in this subsection, the town council may consider evidence submitted by the appellant alleging equitable considerations for registration of a dwelling unit despite noncompliance with a particular requirement of this division. The town council shall consider the advice of the town attorney when evaluating allegations for equitable relief.

(e) Registrants must supplement their application within 30 days if they change the local telephone number for the contact that must be available 24 hours a day.

(f) Beginning on June 1, 2004 and every year thereafter, renewal applications are due for all registered weekly rental units.

- (1) The renewal application shall be the same as the original application except that evidence of subsections (b)(5)a, (b)(5)b, and (b)(5)c shall be mandatory for every renewal period.
- (2) Registrants who continue weekly rentals after failing to complete a renewal application and obtaining registration for another year will be in violation of this code.

Sec. 34-2393. Code of conduct for short-term rentals.

(a) The town hereby establishes a code of conduct that applies to operators and guests of all short-term rental units, including those on the registry of pre-existing weekly rentals and also those rentals between one week and one month that

are permitted by right in accordance with Table 34-2. The code of conduct is as follows:

- (1) **Maximum Occupancy:** Occupancy of each short-term rental unit must be consistent with the definition of "family" that is found in § 34-2 of this code, which defines a family as one or more persons occupying a dwelling unit and living as a single, nonprofit housekeeping unit, provided that a group of five or more adults who are not related by blood, marriage, or adoption shall not be deemed to constitute a family.
- (2) **Refuse Collection:** Refuse containers shall not be moved to the street more than 24 hours prior to scheduled curbside collections nor remain there more than 24 hours after scheduled collections, as required by § 6-11 of the Fort Myers Beach land development code. In addition, if a property owner or property manager is unable to comply with this requirement around the weekly pick-up day, arrangements for additional refuse collection must be secured by the operator.
- (3) **Quiet Hours:** Between the hours of 10:00 PM and 7:00 AM, all guests shall observe quiet hours. This means all outdoor activity, including swimming, shall be kept to a reasonable noise level that is non-intrusive and respectful of neighbors. Town of Fort Myers Beach Ordinance 96-24 sets limits on noise levels during quiet hours and these levels must be obeyed by all guests.
- (4) **Mandatory Evacuations:** All guests staying in short-term rental units must comply with mandatory evacuations due to hurricanes and tropical storms, as required by state and local laws.
 - (b) Operators are required to provide guests with the town's code of conduct for short-term rentals.
 - (1) The town shall provide operators with a printed version of the code of conduct and a standardized agreement for compliance.
 - (2) The operator shall provide guests of short-term rental units with the code of conduct and obtain the signature of guests on the agreement indicating that they are aware of and intend to comply with the code of conduct.
 - (3) The code of conduct shall also be posted at the primary entrance/exit to each short-term rental unit.

(c) Operators must provide the town with a current local telephone number of a contact for each short-term rental unit. This telephone number must be answered 24 hours a day to respond to complaints. These telephone numbers are public records and will be available at town hall during regular business hours.

Sec. 34-2394. Enforcement and penalties.

(a) The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this division.

(b) Persons who may be charged with a violation of this division include property owners, operators, rental agents, guests, and any other person using the structure where the violation has been committed.

(c) For properties on the registry of pre-existing weekly rentals (see § 34-2392), the following additional requirements shall apply:

- (1) Violations of F.S. ch. 509 shall also be considered to be violations of this division as follows:
 - a. Failure to maintain licensure or any other provisions of ch. 509.
 - b. Failure to eject guests who indulge in any conduct which disturbs the peace and comfort, as provided by § 509.141.
- (2) Repeated violations of this division on a registered property shall lead to cumulative penalties. These penalties shall accrue as follows whenever a violation results in a fine being imposed on or paid or whenever a finding of violation is made by a judge or code enforcement hearing examiner:
 - a. First violation: \$250 fine.
 - b. Second violation: \$500 fine.
 - c. Third violation: six-month suspension of registration under § 34-2392.
 - d. Fourth violation: two-year suspension of registration under § 34-2392.After any period of three years during which there were no fines imposed or paid and no formal findings of violations of this division, the next violation shall be deemed to be the first violation for purposes of this section.

Sec. 34-2395–34-2410. Reserved.

DIVISION 33. SIGNS

Sec. 34-2411. Location and construction.

All on-site and off-site signs shall be located, erected, and constructed in accordance with ch. 30.

Secs. 34-2412--34-2440. Reserved.

~~DIVISION 34. SPECIAL SETBACK
REGULATIONS FOR SPECIFIC USES
[deleted in its entirety]~~

DIVISION 34. SPECIAL EVENTS

Sec. 34-2441. Special events defined.

A special event is any social, commercial, or fraternal gathering for the purpose of entertaining, instructing, viewing a competition, or for any other reason that would assemble an unusual concentration of people in one location. Specifically excluded from this definition are any gatherings formed and/or sponsored by any recognized religion or religious society.

Sec. 34-2442. Permits for special events.

(a) The Town of Fort Myers has established a permitting process for special events through Ordinances 98-01 and 00-16 and any future amendments.

(b) No person, corporation, partnership, or other entity shall advertise or sell or furnish tickets for a special event within the boundaries of the town, and no such event shall be conducted or maintained, unless and until that person or entity has obtained a permit from the town to conduct such event.

(c) Special events on the beach shall also comply with § 14-11 of this code.

Secs. 34-2443--34-2470. Reserved.