

ORDINANCE NO. 2015 - 02

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA, AMENDING APPENDIX C, LAND DEVELOPMENT CODE, OF THE CODE OF ORDINANCES OF FLAGLER COUNTY, FLORIDA, RELATING TO SHORT-TERM VACATION RENTALS; PROVIDING FOR FINDINGS; AMENDING ARTICLE III, ZONING DISTRICT REGULATIONS; CREATING SECTION 3.06.14, SHORT-TERM VACATION RENTALS; AMENDING SECTION 3.03.02, AC-AGRICULTURE DISTRICT, SECTION 3.03.03, AC-2-AGRICULTURE/FORESTRY DISTRICT, 3.03.04, R-1-RURAL RESIDENTIAL DISTRICT, 3.03.05, R-1B-URBAN-SINGLE-FAMILY RESIDENTIAL DISTRICT, 3.03.06, R-1C-URBAN SINGLE-FAMILY RESIDENTIAL DISTRICT, 3.03.07, R-1D-URBAN SINGLE-FAMILY RESIDENTIAL DISTRICT, 3.03.08, R-2-TWO-FAMILY RESIDENTIAL DISTRICT, 3.03.09.01, R-3-MULTIFAMILY RESIDENTIAL DISTRICT, 3.03.09.02, R-3B-MULTIFAMILY RESIDENTIAL DISTRICT, 3.03.10, MH-1-RURAL MOBILE HOME DISTRICT, 3.03.11, MH-2-URBAN MOBILE HOME DISTRICT, 3.03.13, R/C-RESIDENTIAL/LIMITED COMMERCIAL USE DISTRICT, 3.03.20, PUD-PLANNED UNIT DEVELOPMENT, 3.03.20.2, MUL-PUD-MIXED USE, LOW INTENSITY-PLANNED UNIT DEVELOPMENT, 3.03.20.3, MUH-PUD-MIXED USE, HIGH INTENSITY-PLANNED UNIT DEVELOPMENT, 3.03.21, FDD-FUTURE DEVELOPMENT DISTRICT, AND 3.08.02, SPECIFIC DEFINITIONS OF CERTAIN TERMS USED IN THIS ARTICLE; PROVIDING FOR CODIFICATION AND SCRIVENER'S ERRORS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, prior to 2011 Florida's cities and counties regulated local land use issues and decisions under the Home Rule authority granted them by the Florida Constitution; and

WHEREAS, the 2011 Florida Legislature enacted House Bill 883 (Florida Chapter 2011-119, Laws of Florida)(hereafter "HB 883") which preempted the local regulation of a specific land use commonly called short-term vacation rentals (transient rentals less than thirty (30) days in duration and commonly located in residential areas); and

WHEREAS, the preemption bill provided for very little oversight from the state for short term vacation rentals, for example, did not provide for staffing for mandatory or

randomized inspection of the short-term vacation rental units and applied relaxed standards for short-term vacation rentals when compared to hotels, motels, and bed and breakfast establishments; and

WHEREAS, HB 883 prevented local communities from enacting new regulations necessary to address any negative impacts caused by short-term vacation rentals; and

WHEREAS, Chapter 720 of Florida Statutes provides for the formation and operation of homeowners' associations, independent of government authority; and

WHEREAS, homeowners' associations may or may not exist in all single- and two-family residential neighborhoods; and

WHEREAS, homeowners' associations may not legally be able to fully address all issues regarding short-term vacation rentals; and

WHEREAS, the 2014 Florida Legislature enacted Senate Bill 356 (Florida Chapter 2014-71, Laws of Florida)(hereafter "SB 356") which rescinded the previous preemption on local regulation of short-term vacation rentals, but provided that a local law, ordinance, or regulation adopted after June 1, 2011 may not prohibit short-term vacation rentals or regulate the duration or frequency of rental of vacation rentals; and

WHEREAS, SB 356 has returned some local control back to communities to mitigate the effects of short-term vacation rentals in an attempt to make them safer, more compatible with existing neighborhoods, and accountable for their proper operation; and

WHEREAS, through SB 356 short-term vacation rentals cannot be prohibited from a community and would be permitted in all zoning districts; and

WHEREAS, single-family residential neighborhoods and their required infrastructure are generally designed to accommodate typical single-family residential homes with two (2) to three (3) persons per household on average; and

WHEREAS, local governments apply design standards tailored for residential neighborhoods for their roads, driveways, emergency services planning, public shelters, emergency evacuation plans, solid waste collection, utilities, buffers, and are also tailored in assessing their infrastructure impacts and their corresponding fair and proportionate impact/connection fees; and

WHEREAS, permanent single-family home residents inherently understand and know their physical surroundings, to include any safety gaps and potential risks to their families because they have daily familiarity; and

WHEREAS, short-term vacation rental occupants, due to the transient nature of their occupancy, are unfamiliar with local hurricane evacuation plans, the location of fire

extinguishers, residence exit routes, pool and home safety features, and other similar safety measures that would readily be provided to guests in traditional lodging establishments; and

WHEREAS, short-term vacation rental owners may live elsewhere and not experience the quality of life problems and negative impacts associated with larger, unregulated short-term vacation rental units on residential neighborhoods; and

WHEREAS, short-term vacation rentals with no application of mitigating standards when located in residential neighborhoods can create disproportionate impacts related to their size, excessive occupancy, and the lack of proper facilities if left unregulated; and

WHEREAS, some short-term vacation rentals will likely be created in single-family homes that were built before more current building codes that require minimum life/safety improvements, like hardwired or interconnected smoke detectors, carbon monoxide detectors, or pool alarms and pool safety drains, etc.; and

WHEREAS, some short-term vacation rental owners will make investments in upgrading building safety measures of their rental properties whereas other owners will not make such investments without local requirements and an ongoing inspection/enforcement program; and

WHEREAS, short-term vacation rentals locating within established neighborhoods can disturb the quiet enjoyment of the neighborhood, lower property values, and burden the design layout of a typical neighborhood; and

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

WHEREAS, traditional lodging establishments (hotels, motels, and bed & breakfasts) are restricted to commercial and other non-residentially zoned areas where intensity of uses is separated from less busy and quieter residential uses; and

WHEREAS, traditional lodging establishments have tougher development standards, undergo annual inspections, and have more stringent operational and business requirements; and

WHEREAS, traditional lodging establishments often have to make roadway improvements and/or pay much higher transportation, water, sewer, and other impact fees to offset the infrastructure demands they create; and

WHEREAS, multi-unit condominium buildings with short-term vacation rental units are typically constructed to more stringent building code requirements and other

fire/life safety measures that single- and two-family homes often do not have to meet, including sprinkler systems, interconnected fire alarm systems, fire alarm panels, emergency lighting, exit signs, fire extinguishers, and fire wall separation between occupancies; and

WHEREAS, multi-unit condominium short-term vacation rentals are routinely (often annually) inspected for fire/life safety code compliance to include inspections for the fire sprinkler system, interconnected fire alarm systems, fire alarm panels, fire pumps, emergency lighting, exit signs, backflow prevention, elevator operation, elevator keys and communication; and

WHEREAS, many multi-unit condominium short-term vacation rentals have on-site property managers and employees or other contracted vendors that oversee the maintenance, upkeep, security and/or operation of the property on a frequent basis; and

WHEREAS, the majority of complaints the County has received to date have been from single- and two-family neighborhoods and not from multi-unit condominium short-term vacation rentals; and

WHEREAS, multi-unit condominium short-term vacation rentals are not regulated locally at this time, but may be in the future if deemed necessary by the Flagler County Board of County Commissioners under the County's home rule authority granted within the Florida Constitution; and

WHEREAS, the areas west of U.S. Highway 1 of the unincorporated County are primarily rural in nature and are typically separated by large setbacks with development typically on larger acreage lots; and

WHEREAS, in the areas west of U.S. Highway 1, very few short-term vacation rental units are known to exist with the exception of hunting camps which are in remote, rural locations and often directly supervised or used by the operator on-site; and

WHEREAS, the majority of complaints the County has received to date have been from single- and two-family neighborhoods east of U.S. Highway 1; and

WHEREAS, the unincorporated areas located west of U.S. Highway 1 will not be regulated locally for short-term vacation rental units at this time, but may be in the future if deemed necessary by the Flagler County Board of County Commissioners under the County's home rule authority granted by the Florida Constitution; and

WHEREAS, whenever at least one (1) property owner permanently resides at a short-term vacation rental located within the same structure the number of renters is minimized and the owner can directly manage the property when it is under a short-term rental; and

WHEREAS, an on-site owner permanently residing at a short-term vacation rental which also serves as the owner's principal residence will likely manage any vacation rental more restrictively than any local regulation because the owner has a direct, vested interest in how the property the owner resides in is used and maintained; and

WHEREAS, owner-occupied short-term vacation rental units are not the norm in the County and will not be regulated locally for short-term vacation rental units at this time, but may be in the future if deemed necessary by the Flagler County Board of County Commissioners under the County's home rule authority granted by the Florida Constitution; and

WHEREAS, permanent residents within residential neighborhoods often establish long-term friendships, social norms and a sense of community which often leads to mutual respect among property owners on an ongoing basis; and

WHEREAS, a single-family dwelling home is typically the largest investment a family will make in their lifetime, with the home held sacred in popular culture as the heart and the center of the family unit; and

WHEREAS, permanent residents within established residential neighborhoods deserve the right to tranquility and peaceful enjoyment of their home without over-intrusion by an excessive number of transient occupants in the neighborhood; and

WHEREAS, Flagler County promotes tourism, including appreciation and enjoyment of the County's abundant preserved natural areas, historic sites, rural pristine beaches, and walking and bicycling paths that make Flagler County unique among Florida's coastal counties; and

WHEREAS, some municipalities in Flagler County, and many local jurisdictions in the State of Florida, and across the nation have standards in place to minimize the negative impacts caused by short-term vacation rentals; and

WHEREAS, prior to the enactment of HB 883, short-term vacation rentals in Flagler County seemed to be more compatible and coexisted in a fairly compatible manner within established neighborhoods with relatively few conflicts and complaints to the County; and

WHEREAS, prior to the enactment of HB 883, the City of Flagler Beach had adopted regulations providing for the siting and approval of short-term vacation rentals within established neighborhoods, with relatively few conflicts resulting from the regulatory framework that has now been effect for several years; and

WHEREAS, since the enactment of HB 883, Flagler County has experienced a large increase in the construction of new, oversized structures for the primary purpose

of serving as mini-hotels for short-term vacation rentals for up to as many as twenty-four (24) individuals; and

WHEREAS, although family sizes per residence can vary widely from residence to residence, according to the recently completed 2010 U.S. Census, Flagler County's average family size is 2.82 persons; and

WHEREAS, the 2010 U.S. Census data also indicates the average household size in Flagler County of 2.42 persons; and

WHEREAS, the operation of some short-term vacation rentals in established neighborhoods in the County create a huge disparity in short-term vacation rental impacts with up to nine (9) times the average occupancy of an existing single-family residence, making the higher occupancy of the rental homes incompatible with established neighborhoods; and

WHEREAS, utility usage by short-term vacation rentals may exceed the usage levels anticipated at the time of initial permitting as a single-family residence, creating a disparity between the impact and connection fees paid and the system impacts caused by their increased demand; and

WHEREAS, at least one utility provider has provided user information showing that some short-term vacation rentals can utilize over ten (10) times the capacity of a typical single-family residence; and

WHEREAS, at least one utility provider has taken steps to charge additional impact/system capacity fees based on the increased usage from short-term vacation rentals; and

WHEREAS, the State of Florida through its existing regulatory framework provides for licensing, maintenance, and inspection of hotels and motels; however no similar regulatory framework exists for short-term vacation rentals; and

WHEREAS, according to the State of Florida records, vacation rentals have flourished for decades while solely under local control; and

WHEREAS, according to the State of Florida Department of Business and Professional Regulation the number of vacation rental home units has actually decreased from 10,602 units in 2010 to 10,362 units in 2013, since the State preemption into this local community land use decision; and

WHEREAS, current vacation rental industry practice is to set maximum limits upon the number of transient occupants within a short-term vacation rental unit, but lacking provisions for verification and enforcement when overcrowding occurs; and

WHEREAS, current vacation rental industry practice is to charge a flat rental fee for the term of the lease, regardless of the transient occupant count, which incentivizes the common practice for lessees of oversized structures used as short-term vacation rentals to increase the transient occupant count so as to spread out the cost burden for the rental term among as many payers as possible; and

WHEREAS, the County desires to encourage short-term vacation rentals that are safe, fit in with the character of the neighborhood, provide positive impacts for tourism, increase property values, and achieve greater neighborhood compatibility; and

WHEREAS, Flagler County seeks to balance respect for private property rights and incompatibility concerns between the investors/short-term vacation rentals and families/permanent single-family residences in established residential neighborhoods through the use of reasonable development standards; and

WHEREAS, while Flagler County's average family size is 2.82 persons, the County is desirous of providing for as many as ten (10) transient occupants in a single-family residence – almost four (4) times the County's average family size – within a short-term vacation rental subject to a reasonable regulatory framework; and

WHEREAS, these regulations are deemed necessary by the Flagler County Board of County Commissioners to preserve property values and to protect the health, safety, and general welfare of permanent residents, lot/parcel owners, investors and transient occupants and visitors alike; and

WHEREAS, these regulations are being promulgated by the Flagler County Board of County Commissioners to supplement, but not to replace, any existing federal or state law or regulation, or other controls within established residential neighborhoods served by a homeowners' association; and

WHEREAS, through these regulations, Flagler County is seeking to regulate another type of commercial use of a single- and two-family dwelling, similar to the County's provisions for home occupations, which permit limited commercial use of an owner-occupied dwelling subject to initial inspection requirements, ongoing compliance with specific home occupation regulations as provided in the Land Development Code, and issuance and annual renewal of a business tax receipt for the home occupation; and

WHEREAS, these regulations do not regulate duration or frequency of rentals, but are intended to address the frequent change of many transient occupants housed within a single-family dwelling within an established residential neighborhood; and

WHEREAS, the application of minimum life/safety requirements to short-term vacation rentals, along with other minimum standards, ensures that transient occupants are provided the same minimum level of protection as is required by the current statutes

and codes for single- and two-family residences utilized as hotels, motels, and dormitories; and

WHEREAS, the County has established a maximum occupancy of sixteen (16) persons within any zoning district because an occupancy exceeding sixteen (16) persons falls into a commercial-type classification as a hotel or dormitory for purposes of the National Fire Protection Association (NFPA) 101 Life Safety Code; and

WHEREAS, for purposes of compliance with the National Fire Protection Association (NFPA) 101 Life Safety Code, residential occupancies of sixteen (16) or fewer persons may be provided within one- and two-family dwelling units without consideration as a hotel or dormitory and provision of related life-safety requirements; and

WHEREAS, the minimum residential safety standards, as adopted by the Florida Legislature as the Residential Swimming Pool Safety Act and now in place, include provision of swimming pool, spa, and hot tub barriers or alarms so as to reduce the likelihood of child and elder drowning; and

WHEREAS, sleeping rooms as so designated within short-term vacation rental units shall be recognized in the same manner as bedrooms within single-family residential homes, with the same requirements as are currently provided within local, state, and federal regulations, as applicable; and

WHEREAS, because of the high occupancy and transient nature of occupants within many short-term vacation rentals, fire safety becomes important; and

WHEREAS, where interconnected, hard-wired smoke and carbon monoxide alarm systems are not in place, then at a minimum, these systems will be installed to provide for sufficient warning for evacuation so as to minimize loss of life within an occupied short-term vacation rental unit; and

WHEREAS, where a fire sprinkler system is not in place, then at a minimum, the placement of a multi-purpose dry chemical fire extinguisher on each floor of a short-term vacation rental will provide a basic level of fire protection based on the class of fire and fire loading anticipated to be encountered in an occupied short-term vacation rental unit; and

WHEREAS, in the event of an emergency, the presence of posted building exit routes can reduce the risk to transient occupants who are unfamiliar with the short-term vacation rental unit; and

WHEREAS, site-specific short-term vacation rental standards, like minimum parking standards, solid waste handling and containment, and the establishment of quiet hours, serve to maintain the decorum that exists among owners in established

neighborhoods and are better assured by having these same standards conveyed to transient occupants through the duration of their rental; and

WHEREAS, short-term vacation rentals operate as commercial enterprises, subject to additional regulatory requirements beyond those normally required of single-family and two-family residences, including business licensing by the State of Florida Department of Business and Professional Regulation's Division of Hotels and Restaurants, obtaining a local business tax receipt, and collecting and remitting various sales taxes to state and local government; and

WHEREAS, a vacation rental is a commercial lodging activity; and

WHEREAS, some vacation rentals are being used exclusively as rentals by investors/owners; and

WHEREAS, the establishment of minimum business practices, such as the provision of both lease-specific and property-specific information to lessees, and the designation of a local short-term vacation rental responsible party, ensures that the private property rights of the short-term vacation rental owner are balanced with the needs of the County to protect visitors and tourists and to preserve the general welfare through its limited regulatory power; and

WHEREAS, the County, through its existing regulatory framework, will issue certificates to short-term vacation rentals conforming to these standards, which will in turn provide a level playing field amongst all providers of short-term vacation rental units; and

WHEREAS, this ordinance additionally establishes an enforcement mechanism for those short-term vacation rentals which do not adhere to the standards on an initial or continuing basis, with the overall goal of the short-term vacation rental program being compliance with the standards and not punitive in its scope; and

WHEREAS, the Flagler County Planning and Development Board held a duly noticed public hearing on October 29, 2014 and recommended approval of this ordinance; and

WHEREAS, the Flagler County Board of County Commissioners held a duly noticed public hearing on November 3, 2014 and approved this ordinance on first reading; and

WHEREAS, the Flagler County staff has held at least fifteen (15) different meetings with potentially affected individuals to hear, discuss, and consider their concerns regarding the ordinance; and

WHEREAS, public notice of this action has been provided in accordance with Section 125.66, Florida Statutes and in accordance with the Flagler County Land Development Code.

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. FINDINGS

- A. The above Recitals are incorporated herein as Findings of Fact.
- B. The Board of County Commissioners further finds as follows:
 - 1. The proposed amendment will provide for the orderly development of Flagler County and complies with applicable Comprehensive Plan goals, objectives and policies; and
 - 2. The proposed amendment will serve to protect the health and safety of residents or workers in the area and will be complementary to the use of adjacent properties or the general neighborhood.

SECTION 2. LAND DEVELOPMENT CODE AMENDMENT

- A. Appendix C, Land Development Code, Article III Zoning Districts, is hereby amended as follows:
 - 1. Creation of new Section 3.06.14, *Short-term vacation rentals*, to read as follows:

3.06.14. – Short-term vacation rentals.

- A. *Applicability.* This section shall apply to short-term vacation rental as a commercial business, as defined in section 3.08.02, of a single-family dwelling and a two-family dwelling. This section shall not apply to short-term vacation rentals within a multi-family residential building, or a group of multi-family residential buildings, which includes three (3) or more individual dwelling units within such building or group of buildings. This section shall also not apply to unincorporated areas west of U.S. Highway 1 and to any facilities that are occupied on a full-time basis by the owner as an on-premises permanent resident.
- B. *Short-term vacation rental minimum requirements.* Short-term vacation rentals shall be permitted in all residential zoning districts provided they are in compliance with this section. No person shall rent or lease all or any portion of a dwelling unit as a short-term vacation rental as defined in section 3.08.02 without initially and then on a continuing basis:

1. Obtaining a short-term vacation rental certificate from Flagler County pursuant to this section;
2. Obtaining a business tax receipt from Flagler County pursuant to chapter 19 of the Code of Ordinances;
3. Obtaining a Florida Department of Revenue certificate of registration for purposes of collecting and remitting tourist development taxes, sales surtaxes, and transient rental taxes;
4. Obtaining a Florida Department of Business and Professional Regulation license as a transient public lodging establishment; and
5. As demonstrated through an affidavit, maintaining initial and ongoing compliance with the Short-term Vacation Rental Standards contained herein, 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.

C. Short-Term Vacation Rental Standards. The following Standards shall govern the use of any short-term vacation rental as a permitted use:

1. Minimum life/safety requirements:
 - a. Swimming pool, spa and hot tub safety – A swimming pool, spa or hot tub shall comply with the current standards of the Residential Swimming Pool Safety Act, Chapter 515, Florida Statutes.
 - b. Sleeping rooms – All sleeping rooms shall meet the single- and two-family dwelling minimum requirements of the Florida Building Code.
 - c. Smoke and carbon monoxide (CO) detection and notification system – If an interconnected and hard-wired smoke and carbon monoxide (CO) detection and notification system is not in place within the short-term vacation rental unit, then an interconnected, hard-wired smoke alarm and carbon monoxide (CO) alarm system shall be required to be installed and maintained on a continuing basis consistent with the requirements of Section R314, Smoke Alarms, and Section R315, Carbon Monoxide Alarms, of the Florida Building Code – Residential.
 - d. Fire extinguisher – A portable, multi-purpose dry chemical 2A:10B:C fire extinguisher shall be installed, inspected and

maintained in accordance with NFPA 10 on each floor/level of the unit. The extinguisher(s) shall be installed on the wall in an open common area or in an enclosed space with appropriate markings visibly showing the location.

2. Maximum occupancy. The following specific site considerations in subsections a., b., and c. shall limit any short-term vacation rental occupancy to whichever is less, but not to exceed the permitted maximums provided in subsections d. or e., as applicable, below:

a. One (1) person per one hundred fifty (150) gross square feet of permitted, conditioned living space; or

b. The maximum number of occupants allowed shall be restricted in accordance with any septic tank permit and the assumed occupancy/conditions the permit was issued under by the Flagler County Health Department; or

c. Two (2) persons per sleeping room, meeting the requirements for a sleeping room, plus two (2) additional persons that may sleep in a common area.

d. In the R-1, R-1b, R-1c, R-1d, R-2, MH-1, MH-2, and R/C zoning districts and any PUD development or specific portion thereof developed as a single- or two-family neighborhood, the maximum occupancy shall be limited to ten (10) occupants per short-term vacation rental unit.

e. In all other zoning districts and developments predominantly developed with greater than two-family dwelling units, the maximum occupancy shall be limited to sixteen (16) transient occupants per short-term vacation rental unit.

3. Parking standard. Based on the maximum short-term transient occupancy permitted, minimum off-street parking shall be provided as one (1) space per three (3) transient occupants. Garage spaces shall count if the space is open and available and the transient occupants are given vehicular access to the garage. On-street parking shall not be permitted.

4. Solid waste handling and containment. Based on the maximum transient occupancy permitted, one (1) trash storage container shall be provided per four (4) transient occupants or fraction thereof. Appropriate screening and storage requirements for trash storage containers shall apply per any development approval or local neighborhood standard, whichever is more restrictive, and be

incorporated into the Certificate. For purposes of this section, a trash storage container shall be a commercially available thirty-five (35) gallon or greater capacity container with a lid that securely fastens to the container so as to prevent spills and animal access, with the container to be placed at curbside on the day of solid waste pickup and to be removed from curbside no later than sunrise the following day.

5. Minimum short-term vacation rental/lease agreement wording. The short-term vacation rental/lease agreement shall contain the minimum information as provided for in subsection 3.06.14.H.

6. Minimum short-term vacation rental information required postings. The short-term vacation rental shall be provided with posted material as required by Flagler County as prescribed in subsection 3.06.14.I.

7. Minimum short-term vacation rental lessee information. The short-term vacation rental lessee shall be provided with a copy of the information required in subsection 3.06.14.H.

8. Designation of a short-term vacation rental responsible party capable of meeting the duties provided in subsection 3.06.14.G.

9. Septic tank wastewater disposal. If wastewater service is provided through a private home septic system, then the owner shall provide Flagler County a valid Health Department septic permit and the application it is based upon for the property, demonstrating the capacity for the short-term vacation rental occupancy requested.

10. Advertising. Any advertising of the short-term vacation rental unit shall conform to information included in the Short-Term Vacation Rental Certificate and the property's approval, particularly as this pertains to maximum occupancy.

11. Other standards. Any other standards contained within the Flagler County Land Development Code to include but not be limited to: noise, setbacks, stormwater, and similar provisions.

D. Short-Term Vacation Rental Certificate. To verify compliance with these short-term vacation rental standards, any property owner who wishes to use his or her dwelling unit as a short-term vacation rental must first apply for and receive a Short-Term Vacation Rental Certificate from Flagler County, and renew the Certificate annually for as long as the unit is used as a short-term vacation rental. Each dwelling unit used as a short-term vacation rental requires a separate Short-Term Vacation Rental Certificate. An annual Certificate fee shall be paid for each dwelling unit certified as a short-term vacation rental, in an amount to be determined by

Resolution of the Board of County Commissioners, to cover the costs of administration of the Certificate and inspection program. Failure to comply with any of the requirements of this section shall be grounds for revocation or suspension of the Certificate in accordance with the requirements contained herein.

E. Application for a Short-Term Vacation Rental Certificate. Each property owner seeking initial issuance of a Short-Term Vacation Rental Certificate, renewal, transfer, or modification of a Short-Term Vacation Rental Certificate, shall submit a Flagler County Short-Term Vacation Rental application in a form specified by the County, along with an application fee in an amount to be determined by Resolution of the Board of County Commissioners.

1. A complete application for the initial or modification of a Short-Term Vacation Rental Certificate shall demonstrate compliance with the Short-Term Vacation Rental Standards above through the following submittals:

a. A completed application and applicable fees.

b. Exterior site sketch – An exterior sketch of the facility demonstrating compliance with the Standards contained herein shall be provided. The sketch provided shall be drawn to scale, and showing all structures, pools, fencing, and uses, including areas provided for off-street parking and trash collection. For purposes of the sketch, off-street parking spaces will be delineated so as to enable a fixed count of the number of spaces provided; however, no parking shall be permitted within a public right-of-way or private roadway tract.

c. Interior building sketch by floor – A building sketch(s) shall be provided by floor showing a floor layout and demonstrating compliance with the Standards contained herein. The sketch shall be drawn to scale, showing all bedrooms and sleeping areas, exits, smoke and carbon monoxide detectors, and fire extinguishers etc.

d. Required short-term vacation rental postings – Copies of required postings shall be provided.

e. A draft short-term vacation rental/lease agreement showing required lease terms – A blank sample to be provided.

f. A Health Department septic tank permit and the application on which the permit is based, if applicable.

- g. Any other required information necessary to demonstrate compliance with the Short-Term Vacation Rental Standards herein.
2. Certificate renewals or transfers. The application for renewal or transfer of a Short-Term Vacation Rental Certificate shall demonstrate compliance with the following:
- a. If no changes have occurred since the issuance of the most recent Short-Term Vacation Rental Certificate, then no additional submittals are required to accompany the renewal/transfer Short-Term Vacation Rental Certificate application except as subsection 3.06.14.E.2.b below may be applicable.
 - b. If minor changes not involving the specific modifications described below in subsection 3.06.14.E.3 have occurred since the issuance of the most recent Short-Term Vacation Rental Certificate, then additional submittals specific to the minor changes shall be required to accompany the application as necessary to demonstrate compliance with the Standards herein.
 - c. An inspection is required whenever there is a transfer of a Certificate.
 - d. A Short-Term Vacation Rental Certificate holder must apply annually for a renewal of the Certificate by January 1 of each year.
3. Modification of Certificate. An application for modification of a Short-Term Vacation Rental Certificate is necessary where any of the following apply:
- a. The gross square footage of the dwelling unit has increased; or
 - b. The number of sleeping areas/bedrooms is proposed to increase; or
 - c. The occupancy is otherwise proposed to increase.

For the inspection of a modification to a Short-Term Vacation Rental Certificate, the modification in facility usage may not occur until after a successful County inspection; however, pending such successful inspection the current Certificate will still apply.

F. Initial and routine compliance inspections of short-term vacation rentals.

1. An inspection of the dwelling unit for compliance with this section is required prior to issuance of an initial Short-Term Vacation Rental

Certificate. If violations are found, all violations must be corrected and the dwelling unit must be re-inspected prior to issuance of the initial Short-Term Vacation Rental Certificate as provided herein. An exception to the correction of violations as required in this subsection is made for any short-term vacation rental seeking vested rights pursuant to subsection 3.06.14.N to the extent that a vesting determination specifically provides such exemption.

2. Once issued, a short-term vacation rental unit must be properly maintained in accordance with the Short-Term Vacation Rental Standards herein and will be re-inspected annually or, in the event of a Certificate transfer, re-inspected at the time of transfer. For an inspection, all violations must be corrected and re-inspected within thirty (30) calendar days. Failure to correct such inspection deficiencies in the timeframes provided shall result in the suspension of the Short-Term Vacation Rental Certificate until such time as the violation(s) is/are corrected and re-inspected.

3. The inspections shall be made by appointment with the short-term vacation rental responsible party. If the inspector(s) has made an appointment with the responsible party to complete an inspection, and the responsible party fails to admit the officer at the scheduled time, the owner shall be charged a "no show" fee in an amount to be determined by Resolution of the Board of County Commissioners to cover the inspection expense incurred by Flagler County.

4. If the inspector(s) is denied admittance by the short-term vacation rental responsible party or if the inspector(s) fails in at least three (3) attempts to complete an initial or subsequent inspection of the rental unit, the inspector(s) shall provide notice of failure of inspection to the owner to the address shown on the existing Short-Term Vacation Rental Certificate or the application for Short-Term Vacation Rental Certificate.

a. For an initial inspection, the notice of failure of inspection results in the Certificate not being issued; the short-term vacation rental is not permitted to operate without a valid Certificate.

b. For a subsequent inspection, the notice of failure of inspection is considered a violation pursuant to subsection 3.06.14.F.2. above and is subject to enforcement remedies as provided herein.

G. Short-term vacation rental responsible party.

1. The purpose of the responsible party is to respond to routine inspections and as well non-routine complaints and other more

immediate problems related to the short-term vacation rental of the property.

2. The property owner may serve in this capacity or shall otherwise designate a short-term vacation rental responsible party to act on their behalf. Any person eighteen (18) years of age or older may be designated by the owner provided they can perform the duties listed in subsection 3.06.14.G.3 below.

3. The duties of the short-term vacation rental responsible party whether the property owner or an agent are to:

a. Be available by landline or mobile telephone at the listed phone number twenty-four (24) hours a day, seven (7) days a week and capable of handling any issues arising from the short-term vacation rental use;

b. If necessary, be willing and able to come to the short-term vacation rental unit within two (2) hours following notification from an occupant, the owner, or Flagler County to address issues related to the short-term vacation rental;

c. Authorized to receive service of any legal notice on behalf of the owner for violations of this section; and

d. Otherwise monitor the short-term vacation rental unit at least once weekly to assure continued compliance with the requirements of this section.

4. A property owner may change his or her designation of a short-term vacation rental responsible party temporarily or permanently; however, there shall only be one (1) short-term vacation rental responsible party for each short-term vacation rental at any given time. To change the designated responsible party, the property owner shall notify Flagler County in writing via a completed form provided by the County.

H. Short-term vacation rental/lease agreement minimum provisions. The rental/lease agreement must contain the following information at a minimum:

1. Maximum occupancy of the short-term vacation rental unit as permitted on the Short-Term Vacation Rental Certificate for the property;

2. The name and ages of all persons who will be occupying the unit;

3. The license tag numbers for all vehicles that the occupant(s) will be parking at the unit, with a total number not to exceed the number of off-street parking spaces at the unit as designated on the Short-Term Vacation Rental Certificate; and

4. A statement that all transient occupants must evacuate from the short-term vacation rental upon posting of any evacuation order issued by local, state, or federal authorities.

I. Required posting of the following short-term vacation rental unit information.

1. On the back of or next to the main entrance door or on the refrigerator there shall be provided as a single page the following information:

a. The name, address and phone number of the short-term vacation rental responsible party;

b. The maximum occupancy of the unit;

c. Notice that quiet hours are to be observed between 10:00 p.m. and 8:00 a.m. daily or as superseded by any County noise regulation;

d. The maximum number of vehicles that can be parked at the unit, along with a sketch of the location of the off-street parking spaces;

e. The days of trash pickup and recycling;

f. If the short-term vacation rental unit is located on the barrier island, notice of sea turtle nesting season restrictions and sea turtle lighting usage; and

g. The location of the nearest hospital.

2. If the short-term vacation rental unit includes three (3) or more occupied floors, on the third floor above ground level and higher floors there shall be posted, next to the interior door of each bedroom a legible copy of the building evacuation map – Minimum 8-1/2" by 11" in size.

J. Offenses/violations.

1. Non-compliance with any provisions of this section shall constitute a violation of this section, which shall include, but shall not be limited to, the specific paragraphs within subsection 3.06.14.B.

2. Separate violations. Each day a violation exists shall constitute a separate and distinct violation, except that occupancy violations shall be governed by subsection 3.06.14.L.3.

K. Remedies/enforcement. Violations of this section shall be subject to penalties as part of a progressive enforcement program with the primary focus on compliance and compatibility with adjoining properties, versus penalties and legal actions. To accomplish a safe and effective vacation rental program it is key that short-term vacation rental responsible parties are responsive and responsible in the management of the property for compliance with this section. Code enforcement activities will be in accordance with Florida Statutes Chapter 162 and the Flagler County Code of Ordinances.

1. Warnings. Warnings shall be issued for first-time violations and have a correction/compliance period associated with it. Such warnings may include notice to other agencies for follow-up by such agencies, such as the Department of Business and Professional Regulation, the Department of Revenue, the Flagler County Tax Collector and the Flagler County Property Appraiser, as applicable. Non-compliance with a correction compliance period shall result in the issuance of a citation.

2. Fines per violation shall be set by Resolution of the Board of County Commissioners for first (1st), second (2nd), third (3rd) and further repeat violations. The County may utilize Part 1 of Florida Chapter 162 to prosecute a code violation and in such case a special magistrate shall be authorized to hold hearings, assess fines and order other relief in lieu of any code enforcement board. Alternatively, the County may utilize Part 2 of Florida Chapter 162 and pursue violations by way of a civil citation system as provided in its Code of Ordinances. The County may also rely on an appropriate enforcing agency at the state or local level.

3. Additional remedies. Nothing contained herein shall prevent Flagler County from seeking all other available remedies which may include, but not be limited to, suspension or revocation of a Short-Term Vacation Rental Certificate, injunctive relief, liens, and other civil and criminal penalties as provided by law, as well as referral to other enforcing agencies.

L. Suspension of Short-Term Vacation Rental Certificate. In addition to any fines and any other remedies described herein or provided for by law, the County may suspend a Short-Term Vacation Rental Certificate for multiple violations of the maximum occupancy in any continuous thirty-six (36) month period, in accordance with the following:

1. Suspension timeframes.

- a. Upon a fourth (4th) violation of the maximum occupancy the Short-Term Vacation Rental Certificate shall be suspended for a period of seven (7) calendar days.
- b. Upon a fifth (5th) violation of the maximum occupancy the Short-Term Vacation Rental Certificate shall be suspended for a period of thirty (30) calendar days.
- c. For each additional violation of the maximum occupancy the Short-Term Vacation Rental Certificate shall be suspended for an additional thirty (30) calendar days up to a maximum period of twelve (12) months. For example the sixth (6th) violation shall be for sixty (60) calendar days; the seventh (7th) violation shall be for ninety (90) calendar days, and so on.

2. Suspension restrictions. A short-term vacation rental may not provide transient occupancy during any period of suspension of a Short-Term Vacation Rental Certificate.

- a. The suspension shall begin immediately following notice, commencing either:
 - 1. at the end of the current vacation rental lease period; or
 - 2. within thirty (30) calendar days, whichever date commences earlier, or as otherwise determined by the County.
- b. Operation during any period of suspension shall be deemed a violation pursuant to subsection 3.06.14.K.2 and shall be subject to daily fine, up to five hundred dollars (\$500) or to the maximum amount as otherwise provided in Florida Statutes for repeat violations, for each day that the short-term vacation rental operates during a period of violation.

3. Number of violations. For purposes of this section only, violations shall be considered per the rental period or per every seven (7) days, whichever is less and for only those violations in which a code enforcement citation or criminal charge was issued. Violations could potentially occur over multiple times over the same rental period.

N. Vesting. Existing, legally-established short-term vacation rentals located in zoning districts and developments described in subsection 3.06.14.A as of January 1, 2015 may become vested in the ways described below.

provided they are otherwise in compliance with all other requirements contained herein.

To qualify for any vesting existing short-term vacation rentals shall have until April 15, 2015 to make a full and complete application for a Short-Term Vacation Rental Certificate and until July 1, 2015 to receive a Short-Term Vacation Rental Certificate to come into compliance with the County's requirements.

1. Rental agreement vesting. It is recognized that likely there are existing rental/lease agreements for short-term vacation rentals in existence at the time of passage of the ordinance enacting this section which may not be in compliance with the terms of this section. Rental agreements that were entered into prior to February 19, 2015, for the period to up to February 28, 2016 shall be considered vested. No special vesting process or fee shall be required to obtain this vesting benefit other than demonstrating eligibility through the normal Short-Term Vacation Rental Certificate process. Such rental/lease agreement(s) shall not be required to be submitted to the County to retain this vesting.

Any rental/lease agreement(s) entered into prior to February 19, 2015, for the period after March 1, 2016 shall be required to be submitted to the County for verification and go through a vesting hearing process for a final determination. All rental agreements entered into after February 19, 2015 and for any rental period beyond January 1, 2017 shall comply with the provisions of the ordinance enacting this section.

2. Temporary vesting of certain safety requirements. Some existing short-term vacation rentals may not meet the minimum life/safety standards (subsection 3.06.14.C.1) required herein. Correcting these measures may take some time to secure a licensed contractor, obtain the necessary permits, and complete the work. All short-term vacation rentals shall have six (6) months from the effective date of the ordinance enacting this section to come into compliance with these standards. A provisional Short-Term Vacation Rental Certificate may be issued for up to a maximum of six (6) months past the adoption of the ordinance enacting this section granting this time for the facility to comply with the physical changes required. No special vesting process or fee shall be required to obtain this vesting benefit other than demonstrating eligibility through the normal Short-Term Vacation Rental Certificate process.

3. Maximum occupancy vesting. In applying the standards of subsection 3.06.14.C to the short-term vacation rentals lawfully in existence prior to February 19, 2015, it is understood that there are properties that may otherwise physically qualify for larger occupancies if the maximum

occupancy were set higher. In an effort to recognize investment backed expectations and yet balance and protect the interest of other single-family and two-family properties who are not rental properties, there shall be a phasing-in of maximum occupancy.

The maximum occupancy for these properties may be temporarily allowed to be capped at no more than fourteen (14) transient occupants providing all other requirements of subsection 3.06.14.C can be met. This maximum density may be retained through February 28, 2018 in which case it shall be reduced by two (2) thereafter. The maximum density of twelve (12) transient occupants shall then be retained through February 28, 2021 and then shall be reduced by two (2) to reach the maximum occupancy herein. No special vesting process or fee shall be required to obtain this vesting benefit other than demonstrating eligibility through the normal Short-Term Vacation Rental Certificate process.

4. For those owners that desire a higher vesting occupancy and/or different vesting schedule, the owner of the property may make application for consideration of an alternative vesting benefit. The alternative vesting process shall require the following information at a minimum, although the actual application and review process may request additional information:
 - a. Submittal of a complete vesting application to include applicable fee;
 - b. Issuance of Short-term Vacation Rental Certificate on the property otherwise meeting all other requirements herein;
 - c. A written narrative and any tabulation/evidence showing what potential financial impacts the reduction in occupancy will create;
 - d. Any prospectus, financial pro forma, or other information relied upon to make the investment into the property;
 - e. Actual short-term vacation rental/lease agreements on the property for the last three (3) years showing the number of occupants for the short-term vacation rental unit per rental;
 - f. Profit and loss statement for the property certified accurate by a Certified Public Accountant for the last three (3) years;
 - g. Detailed gross and net revenues/expenses for the property to include but not be limited to: management fees, maintenance fees, utility costs, and similar expenses;

- h. Purchase price for the property and/or structure – If constructed by the owner, the construction costs of the facility;
- i. Any mortgage or debt on the property along with any monthly debt service payments; and
- j. All other information the applicant believes is relevant in establishing any vested rights claim and to demonstrate an extraordinary consideration that should be considered by the County.

The review process for an application for a higher vesting occupancy and/or different vesting schedule under this subsection will, at a minimum, provide for public notice to property owners within three hundred (300) feet of the subject property.

- 5. In the consideration of applications for vested rights under this subsection, such determinations shall be made by a special master, for which the use and procedures therefor shall be by Resolution of the Board of County Commissioners.
 - a. The determination of the special master shall be deemed final action. In considering an application for vested rights, the burden of demonstrating entitlement to a vested right from the provisions of the ordinance enacting this section shall be on the owner or applicant seeking to establish vested rights.
 - b. Owners, seeking to establish vested rights, must demonstrate that the application of the ordinance enacting this section would inordinately burden an existing use of their real property or a vested right to a specific use of their real property.
- 6. A vested use shall not transfer to a subsequent owner. A vested use is not transferrable to another short-term vacation rental.
- 7. If a vested use ceases for a period of six (6) months, then the vesting shall be considered to have lapsed and the short-term vacation rental will be subject to all Short-Term Vacation Rental Standards as if a new application.

- 2. Amendment to section 3.03.02, *AC-Agriculture district*, subsection B., *Permitted principal uses and structures*, to read as follows:

18. Short-term vacation rentals.

3. Amendment to section 3.03.03, *AC-2-Agriculture/forestry district*, subsection B., *Permitted principal uses and structures*, to read as follows:

7. Short-term vacation rentals.

4. Amendment to section 3.03.04, *R-1-Rural residential district*, subsection B., *Permitted principal uses and structures*, to read as follows:

6. Short-term vacation rentals.

5. Amendment to section 3.03.05, *R-1b-Urban single-family residential district*, subsection B., *Permitted principal uses and structures*, to read as follows:

4. Short-term vacation rentals.

6. Amendment to section 3.03.06, *R-1c-Urban single-family residential district*, subsection B., *Permitted principal uses and structures*, to read as follows:

4. Short-term vacation rentals.

7. Amendment to section 3.03.07, *R-1d-Urban single-family residential district*, subsection B., *Permitted principal uses and structures*, to read as follows:

4. Short-term vacation rentals.

8. Amendment to section 3.03.08, *R-2-Two-family residential district*, subsection B., *Permitted principal uses and structures*, to read as follows:

5. Short-term vacation rentals.

9. Amendment to section 3.03.09.01, *R-3-Multifamily residential district*, subsection B., *Permitted principal uses and structures*, to read as follows:

5. Short-term vacation rentals.

10. Amendment to section 3.03.09.02, *R-3b-Multifamily residential district*, subsection B., *Permitted principal uses and structures*, to read as follows:

5. Short-term vacation rentals.

11. Amendment to section 3.03.10, *MH-1-Rural mobile home district*, subsection B., *Permitted principal uses and structures*, to read as follows:

6. Short-term vacation rentals.

12. Amendment to section 3.03.11, *MH-2-Urban mobile home district*, subsection B., *Permitted principal uses and structures*, to read as follows:

3. Short-term vacation rentals.

13. Amendment to section 3.03.13, *Residential/limited commercial use district*, subsection B., *Permitted principal uses and structures*, to read as follows:

4. Short-term vacation rentals.

14. Amendment to section 3.03.20, *PUD-Planned unit development*, subsection B., *Permitted principal uses and structures*, to read as follows:

19. Short-term vacation rentals.

15. Amendment to section 3.03.20.2, *MUL-PUD-Mixed use, low intensity-planned unit development*, subsection B., *Permitted principal uses and structures*, to read as follows:

16. Short-term vacation rentals.

16. Amendment to section 3.03.20.3, *MUH-PUD-Mixed use, high intensity-planned unit development*, subsection B., *Permitted principal uses and structures*, to read as follows:

17. Short-term vacation rentals.

17. Amendment to section 3.03.21, *FDD-Future development district*, subsection B., *Permitted principal uses and structures*, to read as follows:

16. Short-term vacation rentals.

18. Amendment to section 3.08.02, *Specific definitions of certain terms used in this article*, to include the following definitions:

Bedroom: The term "bedroom" shall have the same meaning as in §381.0065(2)(b), Florida Statutes. The term "sleeping room" is the same as a bedroom.

Short-term vacation rental: 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 which is also a "transient public lodging establishment." As used in section 3.06.14, the term "vacation rental" is the same as a short-term vacation rental.

Transient public lodging establishment: Any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three (3) times in a calendar year for periods of less than thirty (30) days or one (1) calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests. A "transient public lodging establishment" shall be a considered as a non-residential, commercial business, whether operated for profit or as a not-for-profit, and be subject to the additional requirements of section 3.06.14 if the transient public lodging establishment is additionally considered to operate as a short-term vacation rental as defined herein.

SECTION 3. CODIFICATION AND SCRIVENER'S ERRORS

- A. The provisions of this Ordinance shall be included and incorporated into the Code of Ordinances of Flagler County, Florida, as additions and amendments thereto, and shall be appropriately renumbered or relettered to conform to the uniform numbering system of the Code. Scrivener's errors may be corrected as deemed necessary.
- B. Only Section 2 herein shall be codified within the Flagler County Code of Ordinances. Sections not specifically amended herein shall remain unchanged by this Ordinance.

SECTION 4. SEVERABILITY

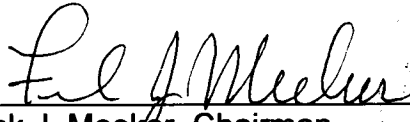
If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any Court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 5. EFFECTIVE DATE

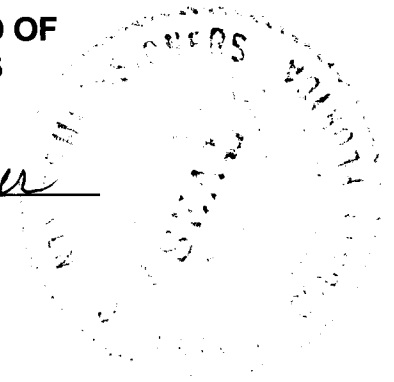
This ordinance shall take effect upon filing with the Secretary of State as provided in Section 125.66, Florida Statutes.

PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA THIS 19TH DAY OF FEBRUARY, 2015.

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS

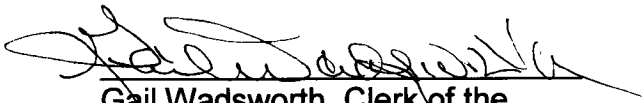


Frank J. Meeker, Chairman



ATTEST:

APPROVED AS TO FORM:



Gail Wadsworth, Clerk of the Circuit Court and Comptroller



Al Hadeed, County Attorney