

ORDINANCE NO. 2016 - 01

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA, AMENDING ORDINANCE NOS. 2015-02 AND 2015-05, AMENDING AND RESTATING IN ITS ENTIRETY SECTION 3.06.14 OF APPENDIX C, LAND DEVELOPMENT CODE OF THE CODE OF ORDINANCES OF FLAGLER COUNTY, FLORIDA, RELATED TO SHORT-TERM VACATION RENTALS; SPECIFICALLY AMENDING SUBSECTION 3.06.14.C, SHORT-TERM VACATION RENTAL STANDARDS, BY ADDING ILLUMINATION OF THE PRIMARY EXIT; AMENDING SUBSECTION 3.06.14.D, SHORT-TERM VACATION RENTAL CERTIFICATE, BY DELETING REFERENCES TO REVOCATION AND SUSPENSION OF CERTIFICATES; AMENDING SUBSECTION 3.06.14.E, APPLICATION FOR A SHORT-TERM VACATION RENTAL CERTIFICATE, BY PROVIDING FOR THE INITIAL CERTIFICATE TO EXPIRE ON DECEMBER 31, 2016 AND FOR RENEWALS TO BE APPLIED FOR BEFORE EXPIRATION WITH INSPECTIONS TO OCCUR BEFORE DECEMBER 31 ANNUALLY; AMENDING SUBSECTION 3.06.14.F, INITIAL AND ROUTINE COMPLIANCE INSPECTIONS OF SHORT-TERM VACATION RENTALS, DELETING REFERENCES TO SUSPENSION OF CERTIFICATES AND DELETING OBSOLETE LANGUAGE; AMENDING SUBSECTION 3.06.14.H, SHORT-TERM VACATION RENTAL/LEASE AGREEMENT MINIMUM PROVISIONS, BY ADDING REQUIREMENTS RELATED TO RETAINING AGREEMENTS FOR MINIMUM PERIOD OF ONE YEAR, CLARIFYING AGREEMENTS NOT PROVIDED TO COUNTY EXCEPT FOR ENFORCEMENT ACTIONS AND OTHER LIMITED CIRCUMSTANCES; AMENDING SUBSECTION 3.06.14.K, REMEDIES/ENFORCEMENT, BY CLARIFYING WHEN STATUTORY FINES FOR VIOLATIONS ARE APPLICABLE AND DELETING REFERENCES TO REVOCATION AND SUSPENSION OF CERTIFICATES AS A NONCOMPLIANCE REMEDY; DELETING SUBSECTION 3.06.14.L, SUSPENSION, IN ITS ENTIRETY; ADDING SUBSECTION M, RESERVED, TO CORRECT ITS PREVIOUS OMISSION; AND AMENDING SUBSECTION 3.06.14.N, VESTING, BY CLARIFYING ELIGIBILITY FOR VESTING, EXTENDING THE APPLICATION SCHEDULE, MODIFYING THE PROVISIONS FOR GRANDFATHERED RENTAL/LEASE

Additions appear as underlined text, deletions as strikethrough
Asterisks indicates text not shown as otherwise unchanged

**AGREEMENTS TO COMPLY WITH THE COURT ORDER,
AND PROVIDING FOR VESTING TO RUN WITH THE
LAND TO ENABLE A TRANSFER TO A SUCCESSOR
OWNER; PROVIDING CLARIFYING AND CORRECTING
AMENDMENTS THROUGHOUT SECTION 3,06.14;
PROVIDING FOR CODIFICATION AND SCRIVENER'S
ERRORS; PROVIDING FOR SEVERABILITY; AND
PROVIDING AN EFFECTIVE DATE.**

WHEREAS, on February 19, 2015, the Flagler County Board of County Commissioners adopted Ordinance No. 2015-02, creating Section 3.06.14, Short-term vacation rentals, of the Flagler County Land Development Code, adopted as Appendix C to the Flagler County Code of Ordinances; and

WHEREAS, on April 6, 2015, the Flagler County Board of County Commissioners adopted Ordinance No. 2015-05, amending Section 3.06.14, related to subsection N, Vesting, to extend the vesting schedule; and

WHEREAS, following adoption of Ordinance Nos. 2015-02 and 2015-05, the County has received numerous applications for Short-Term Vacation Rental Certificates, conducted inspections, and issued Certificates and provisional Certificates consistent with the County's regulations; and

WHEREAS, through the course of implementation of the Ordinance, County staff has sought to improve the administration and implementation of the various regulations, to mitigate and reduce the impacts of the transition and to assist in the compliance with its requirements; and

WHEREAS, the County, through this amendment, has sought to implement ways to lessen the limitations and impacts on current owners of short-term vacation rentals; and

WHEREAS, the County also has determined that its regulations relative to life safety should be more aligned with the State's rules requiring the illumination of the short-term vacation rental's primary exit; and

WHEREAS, County, through this amending Ordinance, is modifying the subsections related to certificate issuance and renewal, suspension and vesting, subsections D, E, K, L, and N, respectively, with amendments to subsections L and N specifically intended to conform with the Court's Order on Plaintiffs' Motion for Preliminary Injunction in Flagler County Circuit Court Case No. 2015 CA 167; and

WHEREAS, this amending Ordinance modifies the subsections of Ordinance No. 2015-02 as amended herein, and all other parts of Ordinance No. 2015-02 remain as originally adopted or as amended by Ordinance No. 2015-05 unless specifically amended herein; and

WHEREAS, public notice of the adoption of this Ordinance 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 amendments 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, Section 3.06.14, *Short-term vacation rentals*, is hereby amended as follows:

- 1. Amendment and restatement of 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 or such successor statutes or Rules as may be applicable.

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.

e. Battery powered emergency lighting of primary exit – Battery powered emergency lighting which provides illumination automatically in the event of any interruption of normal lighting shall be provided for a period of not less than one (1) hour to illuminate the primary exit. For purposes of this requirement, short-term vacation rentals with Short-Term Vacation Rental Certificates issued prior to the enactment of the ordinance providing for the codification of this standard shall have until December 31, 2016 to receive an inspection (as part of the renewal of the initial Certificate) to demonstrate compliance with the emergency lighting standard.

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 subject to the remedies and enforcement grounds for revocation or suspension of the Certificate provided in accordance with subsection 3.06.14.K. ~~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. The initial Short-Term Vacation Rental Certificate shall be valid through December 31, 2016.

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 to the County. ~~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 no sooner than August 1 and no later than October 1 of the Certificate by January 1 of each year and shall have passed all inspections and complied fully with section 3.06.14 by December 31.
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 enforcement as provided in subsection 3.06.14.K ~~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; and the short-term vacation rental is deemed not in compliance with section 3.06.14. ~~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 and requirements*. 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.
5. The rental/lease agreement shall be retained by the responsible party. The responsible party shall retain all rental/lease agreements for a period of one (1) year following the end of the rental period.
6. No rental/lease agreement shall be provided to or retained by the County except as part of an enforcement investigation, emergency, or other action by the County. At the County's request, the responsible party shall immediately provide the County with the rental/lease agreement.

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 in accordance with the statute and order other relief in lieu of using any county 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 civil citation 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. Regardless of whether the County utilizes Part 1 or 2, tThe County may also utilize 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. Reserved. ~~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 (\$500.00) 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.~~

M. Reserved.

N. Vesting. Any holder of a Short-Term Vacation Rental Certificate Existing, legally established short term vacation rentals located in zoning districts and developments described in subsection 3.06.14.A as of December 31, 2015 ~~June 1, 2015~~ is ~~is~~ 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 June 1, 2015 to make a full and complete application for a Short Term Vacation Rental Certificate and until September 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 the adoption of section 3.06.14 on 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. Should any issue arise as to whether a rental agreement allows occupancy in excess of occupancy provided by a Short-Term Vacation Rental Certificate or as otherwise authorized in this subsection, the owner or responsible party shall establish a vested rental agreement to the satisfaction of the County, including providing electronic data that establishes the date on which an agreement was entered into. ~~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 until December 1, 2015 (six (6) months from June 1, 2015) 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 from June 1, 2015 (until December 1, 2015) 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 which ~~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 occupancy density may be retained through February 28, 2018 in which case it shall be reduced by two (2) thereafter. The maximum occupancy 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.

~~34. 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 require the applicant to submit 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 circumstance or consideration that should be weighed ~~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.

45. 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.

56. A vested use shall ~~not~~ transfer to a subsequent owner provided that all applicable Short-Term Vacation Rental Standards continue to be met in addition to any specific vesting conditions. A vested use is not transferrable to another short-term vacation rental property.

67. If a vested use ceases for a period of one (1) year ~~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.

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.

**Remainder of page intentionally blank
Signature page to follow**

PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS
OF FLAGLER COUNTY, FLORIDA THIS 11TH DAY OF JANUARY, 2016.

FLAGLER COUNTY BOARD OF
COUNTY COMMISSIONERS

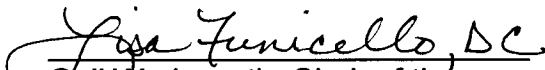


Barbara S. Revels

Barbara S. Revels, Chair

ATTEST:

APPROVED AS TO FORM:



Gail Wadsworth, DC
Gail Wadsworth, Clerk of the
Circuit Court and Comptroller



Al Hadeed
Al Hadeed, County Attorney

