

ORDINANCE NO. 19-_____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 3 OF THE TOWN CODE, "LAND DEVELOPMENT REGULATIONS," BY CREATING SECTION 3-180, "VACATION RENTALS" TO PROVIDE REGULATIONS FOR SUCH USES; AMENDING SECTION 3-261, "DEFINITIONS" TO PROVIDE NEW DEFINITIONS RELATED TO VACATION RENTALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the "Town") has adopted land development regulations, which are codified in Chapter 3 of the Town's Code of Ordinances ("Code"), to facilitate safe and orderly growth which forms an integral part of the community; and

WHEREAS, the Town Council desires to update and revise the standards in the land development regulations; and

WHEREAS, the Town has determined, upon examination of the issue, that the transient use of residential dwellings in the Town has a negative effect on the residential character of the community and that it is necessary and in the interest of the public health, safety, and welfare to monitor and provide reasonable means for the Town to mitigate impacts created by such transitory uses of residential property within the Town; and

WHEREAS, the Chapter 2011-119, Laws of Florida, created a new classification of public lodging establishment known as vacation rentals that is defined in Section 509.242(c), Florida Statutes (2015), as "any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project."; and

WHEREAS, Subsection 509.032(7), Florida Statutes (2015), provides that local laws, ordinances, or regulations may not prohibit vacation rentals or regulate the duration and frequency of rental of vacation rentals; and

WHEREAS, Florida Statutes do not prevent the Town from adopting ordinances specific to vacation rentals to address some of the noise, parking, trash and life-safety issues created by the proliferation of vacation rentals in residential neighborhoods; and

WHEREAS, unregulated vacation rentals can create disproportionate impacts related to their size, excessive occupancy, and lack of proper facilities; and

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

WHEREAS, the other classifications of transient public lodging establishments are subject to stricter development standards, undergo annual inspections, and have more stringent operational and business requirements; and

WHEREAS, the Town finds a substantial interest in furthering the public health, safety and welfare by controlling density, by protecting the residential character of areas designated for residential use, implementing its comprehensive plan, and establishing and enforcing minimum life safety standards; and

WHEREAS, after reviewing the Local Planning Agency's recommendations, the recommendations of Town staff, and comments from the public, the Town Council finds that the proposed amendments to its Code of Ordinances and Land Development Regulations are in compliance and consistent with Florida law and with its adopted Comprehensive Plan; and

WHEREAS, the Town Council finds that this Ordinance is in the best interest and welfare of the residents of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS:¹

Section 1. **Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

Section 2. **Amending Section 3-158 of the Town Code.** The Town Council hereby amends Section 3-158 of the Town Code as follows:

ARTICLE XI. – SUPPLEMENTAL STANDARDS

* * *

SEC. 3-180. – Vacation Rentals

(1) *Registration Requirements.* It is unlawful for any Person to allow another Person to occupy any Residential Property as a Vacation Rental within the Town, or offer such rental services within the Town, unless the Person has registered the Vacation Rental property with the Town in accordance with the provisions of this Chapter.

¹ Coding: Strikethrough words are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with yellow highlighted double strikethrough and double underline. Proposed changes at second reading are indicated in blue highlighted double underline and double strikethrough.

(2) Application for Registration. The application for registration of a Vacation Rental shall be made to the Town Manager on a form provided by the Town, which shall set forth at a minimum: a. The legal description of the property offered for rental, including the complete address, subdivision, or community name.

- b. Proof of ownership of the property, including the name, address and phone number of each Person or entity with an ownership interest in the property.
- c. The gross square footage of the property and ~~of that portion of the~~ Dwelling Unit ~~to be used for the Vacation Rental~~, including the number of rooms, bedrooms, kitchens and on-site parking spaces attributable to the Vacation Rental use.
- d. A valid and current federal employer tax identification number for the Owner(s) of the property, when owned by a corporate entity.
- e. Proof of licensure with, or exemption from, the Florida Department of Business and Professional Regulation for a transient public lodging establishment.
- f. The name, address, ~~e-mail address~~ and 24-hour phone number of the Person who will act as the Vacation Rental Agent, operating the Vacation Rental property. The Vacation Rental Agent phone number shall be answered at all times, 24 hours a day, seven days a week.
- g. The name and contact information for any listing services on or through which the Vacation Rental is to be offered for rent.
- h. The application shall bear the signatures of all Owners, authorized agents, authorized property managers and the Vacation Rental Agent.
- i. The Owner of the property and the Vacation Rental Agent must individually acknowledge the affirmative duty to ensure compliance with the requirements of this Chapter, including the Owner and Vacation Rental Agent Requirements of this Chapter.
- j. Acknowledgement that the application and any related approvals are specific to the property identified in the application and approval; other properties are not jointly shared commodities and shall not be considered available for use by Transient Occupants of the property which is the subject of the application.
- k. Submission of an incomplete registration application form shall result in rejection of the application.

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(3) Vacation Rental Agent Required. Whenever any property is required to be registered under this Chapter, the Owner shall act as, or retain at all times, an appointed natural Person capable of meeting the duties provided in section 3-180(5). The designated Vacation Rental Agent must reside within 30 miles of the Vacation Rental property to serve as the Vacation Rental Agent for service of notices as are specified herein. Notices given to the Vacation Rental Agent shall be sufficient to satisfy any requirement for notice to the Owner. An initial Vacation Rental Agent shall be designated and shall participate in the application for registration, and the Town Manager shall thereafter be notified of any change of Vacation Rental Agent within 15 days of such change.

(4) Fees for Registration. The Town may charge reasonable fees for registration to compensate for administrative expenses which shall be set by resolution of the Town Council.

(5) Owner and Vacation Rental Agent Requirements. In addition to general compliance with all Federal, State, County and Local laws, it is the affirmative duty and responsibility of the Owner and the Vacation Rental Agent, individually and collectively, to adhere to the following:

- a. Inform all guests, in writing, prior to occupancy of the property, of all applicable Town ordinances concerning noise, vehicle parking, garbage, and common area usage.
- b. Maintain the property under their control in compliance with the occupancy limits, as specified in this Chapter, the Minimum Housing Standards of Miami Dade County, Fire Codes, specific requirements of the Florida Building Code and the Town Code, as determined by the Town Manager, Building Official or respective designee;
- c. Ensure that, at all times:
 - 1. all vehicles associated with the Vacation Rental are parked in compliance with the Town Code; and
 - 2. the entire property, including the front, back, and side yards, is maintained free of garbage and litter, provided however, that this subsection shall not prohibit the storage of garbage and litter in authorized receptacles for collection; and
 - 3. all Transient Occupants are aware that it shall be unlawful to allow or make any noise or sound that exceeds the limits set forth Section 26-40 of the Town Code; and
 - 4. the provisions of this Chapter are complied with and promptly address any violations of this Chapter or any violations of law which may come to the attention of the Vacation Rental Agent; and

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5. he or she is available with authority to address and coordinate solutions to problems with the rental of the property at all times 24 hours a day, seven days a week and be physically present at the property to respond to emergency calls within two hours of notification; and

6. he or she keeps available a register of all Transient Occupants, which shall be open to inspection on the Vacation Rental property by authorized personnel of the Town at all times; and

7. no rental is made, or occupancy allowed by, any Person on the Florida Sexual Offenders and Predators (FDLE) database or any other state sex offender database consistent with the requirements of §52.45 “Sexual Violator Residency Prohibition” of the Town Code.

(6) Standards and Requirements for Vacation Rentals.

a. *Registration.* The Director or designee may issue a Registration to an applicant upon proof that the Owner or Vacation Rental Agent has:

1. Submitted a complete Vacation Rental registration application form including appropriate documentation of compliance with applicable Florida Department of Revenue and Florida Department of Business and Professional Regulation requirements; and

2. Submitted any applicable registration fee; and

3. Provided an affidavit, demonstrating initial and on-going compliance with 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 Rules, Chapter 61C and 69A, Florida Administrative Code; and

4. Provided a copy of the rental/lease agreement form to be used when contracting with Transient Occupants ~~and guests~~ which includes the minimum Transient Occupant information required by Section Sec. 3-180(6)b.5. below; and

5. Provided evidence of liability insurance covering the use of the property as a rental property.

6. Subsequent to the issuance of a Registration, a Business Tax Receipt from the Town pursuant to Chapter 32 of the Town Code shall be obtained.

b. *Vacation Rental Standards.* The following standards shall govern the use of any Vacation Rental as a permitted use:

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1. Maximum Occupancy. The Maximum Occupancy of the Vacation Rental shall not exceed any of the following standards:

(a) two Persons per bedroom; and

(b) one Family as defined in the Code.

2. Guest hours. Any Person present on the property after 1¹⁹:00 p.m. on a Sunday –Thursday night or after 1²⁴:00 p.m. Friday or Saturday night shall be considered an overnight Transient Occupant for purposes of calculating Maximum Occupancy.

3. Minimum Transient Occupant information. The following information shall be posted conspicuously within the establishment and shall be provided to each Transient Occupant as part of their lease:

(a) The Maximum Occupancy permitted under the Registration;

(b) A notice that all unauthorized occupants of any Structure or conveyance of the property that have been warned by the Vacation Rental Agent, Owner or registered Transient Occupants to leave and refuse to do so commit the offense of trespass of a Structure or conveyance and will be charged under the State of Florida and local law; and;

(c) A list of uses prohibited on the property which shall include use of the property as a party, event or entertainment venue.

4. Use. The following limitations apply to the use of the property:

(a) ^{The Town noise ordinance shall apply at all times.}~~No sound amplification system.~~

(b) Noise from any amplified sound system shall not be audible after 1¹⁹:00 p.m. on a Sunday-Thursday night or after 1²⁴:00 p.m. on a Friday or Saturday night when measured at any property line of the Vacation Rental;

(c) No more than 3 unregistered guests may be present on the property at any given time and no unregistered guests may remain on the property after 1¹⁹:00 p.m. Sunday-Thursday night or after 1²⁴:00 p.m. on Friday or Saturday night.

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(d) The Vacation Rental may not be used or advertised for any commercial or non-residential use, including use of the property as a party, event or entertainment venue.

5. Advertising. Any advertising of the Vacation Rental by the Owner on any service shall conform to information included in the Vacation Rental Registration and the property's approval, and shall include at a minimum, identification of the Maximum Occupancy permitted on the property.

6. Other standards. The Occupants shall be advised that all standards contained within the Town Code (including, but not limited to, noise, parking, and property maintenance) are applicable to the Vacation Rental and may be enforced against the Transient Occupant, Vacation Rental Agent and Owner.

(7) Sale or Transfer of Dwelling Unit Used for Vacation Rentals. Whenever a Dwelling used for Vacation Rentals is sold or otherwise changes ownership and the new Owner desires to use the Dwelling for Vacation Rentals, the new Owner must, prior to allowing any Vacation Rental use Submit a new Vacation Rental registration application;

(8) Administration, Penalties, and Enforcement.

a. Annual Registration of Vacation Rentals. All Vacation Rental Registrations shall be renewed annually with the Town upon payment of the renewal fee and verification that there are no outstanding code violations on the Property. Any violations must be corrected and any fines paid prior to renewal of the registration. Failure to correct outstanding violations in the timeframes provided shall result in the denial of an initial application or suspension of the Vacation Rental registration until such time as the violations are corrected and inspected.

b. Registration not transferable. No registration issued under this Chapter shall be transferred or assigned or used by any Person other than the Person to whom it is issued, or at any location other than the location for which it is issued.

c. Expiration of registration. All registrations issued under the provisions of this Chapter shall be valid for no more than one year, and all registrations shall expire on September 30th of each year. Fees for renewal shall be established by resolution of the Town ~~Council~~ Commission. In the event of a failure to renew the Vacation Rental registration prior to the expiration date, a new application for registration of a Vacation Rental shall be required.

d. Revocation. In addition to, or as an alternative to, the penalties of subsection (e) below, any Vacation Rental registration issued pursuant to this Chapter may be denied, revoked, or suspended by the Town Manager upon the adjudication of a violation of this Chapter, any Town Ordinance, or state law by the Vacation Rental Agent, Owner, Transient Occupant ~~or guest~~ attributable to the property for which the Vacation Rental registration is issued. Such denial, revocation or suspension is in addition to any other penalty or remedy available at law.

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e. Offenses/violations.

1. Fine. A violation of any of the provisions of this Chapter is punishable by a fine of up to two hundred and fifty dollars (\$250.00) per violation. Each day a violation occurs shall constitute a separate violation. Repeat violations shall be punishable by a fine of up to five hundred dollars (\$500.00) per violation.

2. Suspension of Vacation Rental Registration. In addition to any fines and any other remedies described herein or provided for by law, the Special Magistrate shall suspend a Vacation Rental registration for multiple violations of the maximum occupancy, parking requirements, noise ordinance, failure to advertise the maximum occupancy, or any other requirements of this Chapter, in any continuous 48 month period, in accordance with the following suspension timeframes:

(a) Upon finding of a second violation of the Maximum Occupancy, parking requirements, noise ordinance, failure to advertise the maximum occupancy, failure of the Vacation Rental Agent to perform the duties required by this Chapter, or any other requirements of this Chapter, the Vacation Rental registration shall be suspended for a period of 30 calendar days.

(b) Upon finding of a third violation of the Maximum Occupancy, parking requirements, noise ordinance, failure to advertise the maximum occupancy, failure of the Vacation Rental Agent to perform the duties required by this Chapter, or any other requirements of this Chapter, the Vacation Rental registration shall be suspended for a period of 12 calendar months.

(c) For each additional violation of the Maximum Occupancy, parking requirements, noise ordinance, failure to advertise the maximum occupancy, failure of the Vacation Rental Agent to perform the duties required by this Chapter, or any other requirements of this Chapter, the Vacation Rental registration shall be suspended for an additional 12 calendar months.

3. Suspension restrictions. A Vacation Rental may not provide Transient Occupancy during any period of suspension of a Vacation Rental registration. The suspension shall begin immediately following notice, commencing the earlier of:

~~(a) the end of the current Vacation Rental lease period; or~~

~~(b) thirty calendar days~~ following notice of the suspension.

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4. Operation during any period of suspension shall be deemed a violation pursuant to this Chapter and shall be subject to a daily fine, up to the maximum amount as otherwise provided in Florida Statutes for repeat violations, for each day that the Vacation Rental operates during a period of violation.

(9) Vesting.

a. Vacation Rentals existing as of [INSERT DATE OF ADOPTION OF THIS ORDINANCE, 2019] shall be considered vested Vacation Rentals only as related to contracts entered prior to [INSERT DATE OF ADOPTION OF THIS ORDINANCE, 2019]. Rental/lease agreements that were entered into prior to [INSERT DATE OF ADOPTION OF THIS ORDINANCE, 2019], as evidenced by a written and validly executed rental/lease agreement or contract provided to the Town Manager no later than [INSERT DATE OF ADOPTION OF THIS ORDINANCE, PLUS 3 MONTHS] shall be considered vested.

b. Vesting shall:

1. Apply only to date specific rental agreements; and
2. Not apply to renewals of existing rental agreements or contracts which are at the option of either of the parties.
3. All rental agreements entered into after [INSERT DATE OF ADOPTION OF THIS ORDINANCE, 2019] shall comply with the provisions of this Chapter. No Vacation Rental shall be occupied pursuant to a contract/lease entered into after [INSERT DATE OF ADOPTION OF THIS ORDINANCE, 2019], until the Owner has registered the property as a Vacation Rental.
4. A vested contract/lease transferred to a subsequent Owner shall continue to be vested, but shall not be transferred to a different Vacation Rental property, provided the new Owner complies with the registration requirements of this Chapter.

ARTICLE XVII. – DEFINITIONS

Sec. 3-261. – Definitions

* * *

Vacation rentals. The following definitions are application to Section 3-180, “Vacation Rentals”.

Enclosed means any space enclosed by a roof and 4 complete solid, floor to roof walls, which may include glass windows. Screening shall not count as a wall.

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Transient occupant means any person, or guest or invitee of such person who occupies or is in actual or apparent control or possession of residential property registered or used as a vacation rental. It shall be a rebuttable presumption that any person who holds themselves out as being an occupant or guest of an occupant of a vacation rental, or a property used as a vacation rental, is a transient occupant.

Vacation rental means any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is rented to guests more than three times in a calendar year for periods of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests, but that is not a timeshare project.

Vacation Rental Agent means the owner or the person designated by the owner of the property to be called upon to answer for the maintenance of the property and for the conduct and acts of transient occupants of vacation rental properties.

* * *

Section 3. Severability. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 4. Conflict. All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 5. Inclusion in the Code. It is the intention of the Town Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Town of Cutler Bay; that the sections of this Ordinance may be re-numbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this 20th day of February, 2019.

PASSED AND ADOPTED on second reading this _____ day of March, 2019.

TIM MEERBOTT
Mayor

Attest:

DEBRA E. EASTMAN, MMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
Town Attorney

First Reading

Moved By: Council Member Callahan

Seconded By: Council Member Duncan

Second Reading

Moved By: _____

Seconded By: _____

FINAL VOTE AT ADOPTION:

Mayor Tim Meerbott _____

Vice Mayor Sue Ellen Loyzelle _____

Council Member Robert "BJ" Duncan _____

Council Member Michael P. Callahan _____

Council Member Roger Coriat _____