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Memorandum

To: Honorable Mayor and City Commissioners

From: Carmen Y. Davis, City Manager

Date: February 3, 2023

Subject: Air B&B, Short-term and Vacation Rental Potential Regulations Update

Per a commissioner's request for additional information regarding vacation and short-term rentals, here is summary of additional questions posed and the documentation, if any, that provides the answers.

1. How many vacation/short-term rentals are there in the City?

City staff estimates that there may be anywhere between 250 and 700 short-term and vacation rentals in the City. An actual number is difficult to ascertain as there are various location databases and provider services with varying numbers depending on which listings are active or not. In addition, the databases do not necessarily follow the City's municipal boundaries; some listings are based on zip codes, while others are based on the location with either Lake Worth Beach or Lake Worth listed.

2. What is or has been the trend in recent years?

Vacation rentals and short-term rentals continue to grow in popularity as evidenced by the growing number of options and types of rentals available.

3. Are they legal or not?

This issue has been addressed on multiple occasions. The City Attorney's Office has provided a concise legal opinion. In summary, the City's Codes do not allow and have not allowed vacation/short term rentals of dwelling units for at least the past twenty years or more.

Lodging that is 60 days or less is defined in the code as "transient lodging" and "transient lodging" is not allowed for dwelling units. The Land Development Regulations do not, and formally the Zoning Code did not, specifically allow either vacation rentals or short-term rentals. With both Codes being inclusionary with regard to permitted uses, if a use is not listed as being allowed, it is by default prohibited. Since the City's prohibition against vacation/short term rentals pre-dates the state's statutory pre-emption (i.e., the City's prohibition was in place prior to 2011), the City

continues to assert that vacation/short term rentals are not authorized in the City. The City's prohibition has been upheld by the City's special magistrate.

While the City is aware there may be vacation rentals operating in the City in violation of the City's LDRs, City staff and the City Commission continue to review and discuss this issue.

4. **What do rules say about minimum stays?**

City Code

"*Transient public lodging*" is defined in the City's code as, "any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three (3) times in a calendar year for periods of sixty (60) days or less, or two (2) calendar months, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests. Excluded from this definition is a unit or dwelling that is not advertised or held out to the public as a place regularly rented for periods of less than one (1) calendar month, provided that no more than four (4) rental units within a single complex of buildings are available for rent.

Florida State Statute

Section 509.013, Florida Statutes, defines "*Transient public lodging establishment*" as "any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests."

Section 509.242, Florida Statutes, defines a vacation rental 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."

5. **What kind of complaints have been received?**

- Operating without City of Lake Worth Beach Business License for residential rental
- Operating as a vacation rental or short-term rental when City does not allow them
- Accumulation of trash, garbage, and debris
- Generating excessive noise, overcrowding, and traffic
- Parking within the neighborhood and not at the property being rented

6. **Is there some sort of quantification of complaints?**

Community Code Compliance has over 250 complaints awaiting a policy decision from the Commission. Enforcing complaints regarding vacation/short term rentals have been on hold for

several years. Other complaints related to the properties in question such as lack of a license, property maintenance, and other general issues have been addressed separately.

7. What taxes (of any other fees) are paid?

Since the City does not license them specifically, many have a regular City Business License for residential rentals, which includes the Business Tax Receipt (BTR) for the specific type of residential rental which ranges from \$26.81 to \$40.21 per year and the Use & Occupancy fee of \$50 plus \$5 per unit. Vacation rentals and short-term rentals in Palm Beach County are required to have a Tourist Development Tax account number (TDT is 6% of total taxable rental) and County BTR.

8. Who receives the taxes?

The City receives its BTR and Use and Occupancy fees. The County receives its BTR fees and the TDT is collected by the Palm Beach County Tax Collector's Office, which funnels the revenue to the Tourist Development Council.

9. Estimate of how much taxes (fees) paid?

Staff cannot provide this figure at this time; however, residential rental licenses in the City generate approximately \$120K and \$140K each fiscal year for all types of residential rentals. Were vacation/short term rental licenses allowed, they would only comprise a portion of this total.

10. Summary of legal history?

The City Attorney's Office provided the attached legal summary on May 13, 2013; since that time, the City Attorney's Office has provided updates on the status of the statutory preemption in section 509.032, Florida Statutes. Basically, the pre-emption remains but the Legislature amended the preemption several years ago to allow for cities to regulate vacation rentals so long as such regulations do not regulate the frequency or duration of vacation rentals.

11. Provide a clear and complete list of options.

Provided in the PowerPoint attached as well as the memorandum are the available options for the Commission. Depending on which of those options the Commission desires, that will dictate the next potential options. Ultimately, the Commission may want to address enforcement for either option selected. The two main options are to:

- (1) Continue with the assertion that vacation rentals are not allowed in the City.

If the Commission desires to continue with the assertion that vacation rentals are not allowed in the City, the Commission may then want to make a policy decision on how that is enforced (e.g., complaint-driven enforcement or active enforcement).

- (2) Allow vacation rentals city-wide.

If the Commission desires to allow vacation rentals city-wide, the Commission should then address whether it wants to impose appropriate regulations on such vacation rentals. Consequently, the City's current prohibition on vacation rentals, the City will be required by statute to allow vacation rentals in all dwelling units including those in single family residential areas. However, by statute, the duration and frequency of the vacation rentals cannot be regulated by the City. An enforcement component would be a part of this option.

Potential regulatory options (included in back-up documentation):

- *Establish a registration process as part of the Business License application process for the property owner which may include:*
 - a. A completed and signed Vacation Rental Registration Form
 - b. Payment of application fee (to be established by resolution and based on occupancy level)
 - c. A copy of the Vacation Rental's current and active license as a transient public lodging establishment with the Florida Department of Business and Professional Regulation.
 - d. A copy of the Vacation Rental's current and active certificate of registration with the Florida Department of Revenue.
 - e. Evidence of the Vacation Rental's current and active account with the Palm Beach County Tax Collector and Palm Beach County.
 - f. Exterior site sketch showing all structures, pools, spas, hot tubs, fencing, and uses, including areas provided for off-street parking.
 - g. Interior building sketch by floor showing the floor layout, identifying all bedrooms, other rooms, exits, hallways, stairways, as applicable.
 - h. Occupancy limits established based on sketch and posted within Vacation Rental.
 - i. Property owner to provide 24/7 contact information for property owner or manager in case of emergency to City, PBSO, PBCFR, and all occupants.
 - j. Parking restrictions.

- *Other regulatory considerations:*
 - a. Possibly equate the Vacation Rental use to a motel, hotel, or extended stay lodging and meet the performance criteria of such uses as outline in the LDR.
 - b. Create potential schedule for violations and identify irreparable fine amount for operating without the appropriate licenses and certifications.
 - c. Meet commercial fire code and accessibility requirements.
 - d. Potentially treat structures (residences) being used commercially as formal changes in use and occupancy triggering Florida Building Code Requirements to bring the structures up to current code. This may involve structural, electrical, mechanical, and plumbing requirements.
 - e. Claim property as homestead (with exception for owner-occupied).

- f. Possibly access utilities under the commercial rate schedules (coordination with Village of Palm Springs and Palm Beach County would be necessary on properties outside City limits).
 - g. Conduct Use and Occupancy inspection to reflect commercial use and potentially increase to an annual inspection along with Fire Marshal inspection.
 - h. Make external signage consistent with current sign code; internal postings would be required for waste collection schedule, noise ordinance, emergency numbers, etc.
 - i. Create a specific calls-for-service standard for Vacation Rentals to more quickly declare them a Chronic Nuisance and commence the process to obtain compliance with all regulations.
- *Steps to Incorporate Regulations:*
 - a. The City would need to amend the following Chapters of its Code of Ordinances and its Schedule of Fees and Changes.
 - Chapter 2, Administration, Article VI Code Compliance and Article VII Abatement of Nuisances
 - Chapter 9, Buildings and Structural Regulations – 40-year recertification of commercial and multi-family structures and buildings
 - Chapter 11, Fire Protection and Prevention
 - Chapter 14, Business License
 - Chapter 18, Utilities
 - Chapter 23, Land Development Regulations, Article 1 General Provisions, Article 3 Zoning Districts, Article 4 Development Standards and possibly Article 5 Supplemental Regulations.

12. Provide Flowchart of options.

Please see the response to item No. 12 above. Such a flowchart is really just picking the first of the two (2) options and then deciding on regulation options and/or enforcement options.