

Chapter 26.5 - VACATION RENTALS

ARTICLE I. - IN GENERAL

Sec. 26.5-1. - Authority, scope and purpose.

This chapter is enacted under the home rule power of the City of Cocoa Beach in the interest of the health, peace, safety and general welfare.

F.S. § 509.013, provides a distinction between "transient public lodging establishments," which are rented, or advertised or held out for rental 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; and "nontransient public lodging establishments," which are rented, or advertised or held out for rental to guests for periods of at least thirty (30) days or one (1) calendar month, whichever is less.

F.S. § 509.242(1)(c), further provides for a subset of transient public lodging establishments, called "vacation rental" which is 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.

It is the intent of this chapter to regulate vacation rentals as defined by Florida Statutes, as well as other transient public lodging establishments which are located in the RS-1 single family residential zoning district of the City of Cocoa Beach, which collectively are referred to herein as "vacation rentals".

In 2011, the Florida Legislature passed House Bill 883, (Chapter 2011-119, Laws of Florida), amending F.S. § 509.032(b) to provide that "[a] local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use or occupancy. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011."

In 2014, the Florida Legislature passed Senate Bill 356 (Chapter 2014-71, Laws of Florida), amending that same statute to read "[a] local law, ordinance, or regulation may not prohibit vacation rentals, or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011."

The official statement of legislative intent of Senate Bill 356 as reflected in the House of Representatives' Final Bill Analysis, dated June 19, 2014, states that the "Effect of the Bill" is as follows:

"The bill permits local governments to create regulation that distinguishes vacation rentals from other residential property. In the past, local government regulations have included noise, parking, registration, and signage requirements for vacation rentals.

"The bill does not allow local governments to create regulations that would prohibit vacation rentals or restrict the duration or frequency of vacation rentals. These types of regulation remain preempted to the state.

"The grandfather provision in existing law exempting any local law, ordinance, or regulation adopted on or before June 1, 2011, is maintained. Any local law, ordinance, or regulation passed before that date that prohibits or restricts vacation rentals based on the duration or frequency may continue to be enforced."

This Chapter does not prohibit Vacation Rentals, or the duration or frequency of Vacation Rentals, nor is it the intention of the City of Cocoa Beach to do so, but rather this Chapter is intended to address life safety and compatibility concerns in the interests of the health, peace, safety, and general welfare.

(Ord. No. 1621, § 1, 6-7-2018)

Sec. 26.5-2. - Findings of facts.

Based on information presented at various city commission meetings by residents of Cocoa Beach and owners and operators of vacation rentals, the practical first-hand experience and observations of city commissioners, common sense deductions of city commissioners based on long term experiences in Cocoa Beach, information learned by city commissioners from various residents, information from the U.S. Census, as well as evidence and testimony presented at

public hearings before the city commission, and on the Short-Term Rental Housing Restrictions White Paper, prepared by Robinson & Cole, Attorneys at Law, in 2011, prepared for the National Association of Realtors®; the city commission finds:

- (1) Residents residing within their residential dwellings are inherently familiar with the local surroundings, local weather disturbances, local hurricane evacuation plans, and means of egress from their residential dwellings, thereby minimizing potential risks to themselves and their families.
- (2) In contrast, transient occupants of vacation rentals, due to their transient nature, are typically not familiar with local surroundings, local weather disturbances, local hurricane evacuation plans, and means of egress from the vacation rentals in which they are staying, thereby increasing potential risks to themselves and their families, and putting an additional burden on, and potentially putting at risk, emergency personnel in the event of an emergency situation.
- (3) Certain vacation rentals are presently located within the RS-1 single family residential zoning district of the City of Cocoa Beach.
- (4) Vacation rentals, left unregulated, can create negative impacts within residential neighborhoods due to excessive noise, parking and traffic problems, excessive use and impact on public services and public works, extreme size and/or greater occupancy.
- (5) Vacation rentals situated within residential neighborhoods can disturb the quiet nature and atmosphere of the residential neighborhoods, and the quiet enjoyment of its residents.
- (6) Vacation rentals located within established residential neighborhoods can create negative compatibility impacts relating to extreme noise levels, late night activities, on-street parking issues and traffic congestion.
- (7) A residential dwelling is typically the single largest investment a family will make with the residents of the residential dwelling desiring the tranquility and peaceful enjoyment of their neighborhood without excessive noise and increased parking issues and traffic congestion caused by transient occupants of vacation rentals.
- (8) According to the 2017 U.S. Census estimates, the City of Cocoa Beach has an average household size of 1.97 persons.

- (9) Vacation rentals situated in the RS-1 single family residential zoning district neighborhoods can and do create a great disparity in occupancy.

(Ord. No. 1621, § 1, 6-7-2018)

Sec. 26.5-3. - Definitions.

The following terms as used in this chapter are defined as set forth hereinafter:

Bedroom means any room in a vacation rental which has a bed or other place for sleeping and a separate closet that is an integral part of the permanent construction within the bedroom or an ensuite bathroom, and complies with the Florida Fire Code and Florida Life Safety Code as a bedroom, but shall not include a bathroom, a kitchen, a dining room, any main living area, or any exterior area or vessel. If a previously approved bedroom exists as of the effective date of this code, and does not have a separate closet that is an integral part of the permanent construction of the structure, but rather utilizes an armoire or other furniture piece for clothing storage, the requirement for a closet to qualify as a bedroom is waived. If there is more than one (1) living room, such additional living room can count as a bedroom as long as it has emergency egress as required for a bedroom.

Occupant means any person who occupies a vacation rental overnight. The term "occupant" includes the owner, agent, or other person staying overnight at the vacation rental whether or not they are paying for the rental, so long as at least one (1) person at the vacation rental is paying for the rental.

Owner occupied means the vacation rental is then occupied by person(s), at the vacation rental owner's consent, who do not pay rent for the occupancy of the vacation rental, when such persons are members of the family of the vacation rental owner, at a time when there are no person(s) occupying the vacation rental who are paying for such occupancy.

Transient public lodging establishments means 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.

Vacation rental is collectively a vacation rental as defined under Florida Statutes, and any transient public lodging establishment which is located in the RS-1 single family residential zoning district of the City of Cocoa Beach.

Vacation rental owner is the fee simple owner of the vacation rental, whether an individual, partnership, corporation, limited liability company, trust, or other entity. In the event the vacation rental owner is not an individual, each and every person who owns twenty (20) percent or more of the equitable interest in the vacation rental shall also be deemed a vacation rental owner. The duties and functions of a vacation rental owner may, at the option of the vacation rental owner, be performed by an agent of the vacation rental owner, so long as the vacation rental owner notifies the city in writing, on a form provided by the city, of the identity and contact information of such agent, and the specific duties that the agent will be performing for the vacation rental owner. The vacation rental owner may change the designation of agent at any time through the filing of a new form and the payment of an administrative fee in an amount as set by resolution by the city commission. The vacation rental owner shall be held responsible for all actions of such designated agent with respect to the applicable vacation rental.

(Ord. No. 1621, § 1, 6-7-2018)

Sec. 26.5-4. - Enforcement.

Violations of this ordinance shall be enforced in accordance with the provisions of section 1-8 of this Code of Ordinances, and through fines in accordance with ordinances and resolutions adopted by the city commission.

(Ord. No. 1621, § 1, 6-7-2018)

Sec. 26.5-5. - Appeals.

Any decision of the city manager or his or her authorized designee relating to this ordinance shall be rendered in writing in appealable form, and reviewed by the city special magistrate if a notice by the vacation rental owner or agent is filed with the city clerk within ten (10) days after the action to be reviewed. The city clerk shall place the matter on the agenda of the next available meeting of the special magistrate, but no later than thirty-five (35) days after the notice by the vacation rental owner or agent is filed, at which the matter will be reviewed. The decision of the special magistrate shall be final and shall be rendered in writing in appealable form. Such final decision may be reviewed as permitted under Florida law.

(Ord. No. 1621, § 1, 6-7-2018)

Sec. 26.5-6. - Construction of chapter.

This chapter shall be liberally construed to accomplish its purpose of regulating vacation rentals, protecting the residential character of the RS-1 single family residential zoning district of Cocoa Beach, the health, safety, and general welfare of its residents and visitors, and the quiet enjoyment by Cocoa Beach's residents of their residential property.

(Ord. No. 1621, § 1, 6-7-2018)

Sec. 26.5-7. - Severability.

In the event that any word(s), phrase(s), portion(s), sub-sub-section(s), sub-section(s), or section(s) of this chapter, is contrary to law, or against public policy, or shall for any reason whatsoever held to be invalid, illegal or unconstitutional, by any court of competent jurisdiction, such word(s), phrase(s), portion(s), sub-sub-section(s), sub-section(s), or section(s) of this chapter shall be null and void, and shall be deemed severed, and a separate, distinct, and independent provision from the remaining provisions of this chapter, and such holding shall in no manner affect the validity of the remaining words, phrases, portions, sub-sub-sections, sub-sections, or sections of this chapter, which shall remain in full force and effect. This chapter shall be construed in a manner to accomplish, to the greatest extent legally possible, the purposes of this chapter as expressed herein.

(Ord. No. 1621, § 1, 6-7-2018)

Secs. 26.5-8—26.5-20. - Reserved.

ARTICLE II. - VACATION RENTAL REGISTRATION

Sec. 26.5-21. - Registration required.

No later than October 1, 2018, every vacation rental owner, either personally or through an agent, shall register with the City of Cocoa Beach utilizing forms promulgated by the city. The city may extend the date that such registration is required by notice on the city's website should the city not publish forms and fees for registration by July 1, 2018. A separate registration shall be

required for each vacation rental. The operation of a vacation rental without registration after the date registration is required shall be a violation of this ordinance, except in the instance of providing accommodations to fulfil a pre-existing contract as provided hereinafter. Every day of such operation without registration shall constitute a separate violation.

(Ord. No. 1621, § 1, 6-7-2018)

Sec. 26.5-22. - Vacation rental registration.

- (a) A vacation rental owner or agent, as applicable, registering a vacation rental with the city shall submit to the city a completed registration form, utilizing a form promulgated by the city, together with a registration fee in the amount set by resolution of the city commission.
- (b) A registration form shall include the following submittals:
 - (1) A completed vacation rental registration form.
 - (2) Payment of applicable fee.
 - (3) 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, if the registrant has such license.
 - (4) A copy of the vacation rental's current and active certificate of registration with the Florida Department of Revenue for the purposes of collecting and remitting sales surtaxes, transient rental taxes, and any other taxes required by law to be remitted to the Florida Department of Revenue, if the registrant has such certificate of registration.
 - (5) Evidence of the vacation rental's current and active account with the Brevard County Tax Collector for the purposes of collecting and remitting tourist development taxes and any other taxes required by law to be remitted to the Brevard County Tax Collector, if the registrant has such account.
 - (6) Exterior site sketch. An exterior sketch of the vacation rental facility shall be provided. The sketch shall show and identify all structures, pools, spas, hot tubs, fencing, and uses, including areas provided for off-street parking. For purposes of the sketch, off-street parking spaces shall be delineated so as to enable a fixed count of the number of spaces provided. At the option of the vacation rental owner, such sketch may be hand drawn, and need not be professionally prepared.

- (7) Interior building sketch by floor. A building sketch by floor shall be provided, showing a floor layout identifying all bedrooms, other rooms, exits, hallways, stairways, as applicable. At the option of the vacation rental owner, such sketch may be hand drawn, and need not be professionally prepared.
 - (8) Identity of non-paying occupants and vehicles. A statement as to the names of any non-paying occupants who will occupy the vacation rental overnight when there will be one (1) or more paying occupants at the vacation rental, such as vacation rental owner(s) and family, as well as the number of vehicles to be present as a result of the presence of the non-paying occupants.
- (c) If a registration form is incomplete, the registrant will be notified of the deficiency, and be allowed ten (10) days to provide any missing information or fees.

(Ord. No. 1621, § 1, 6-7-2018)

Sec. 26.5-23. - Modification of vacation rental registration.

An amendment of a vacation rental registration shall be required in the event that any of the following changes to the vacation rental are proposed:

- (1) An increase or decrease in the number of bedrooms in the vacation rental.
- (2) An increase in the maximum occupancy of the vacation rental.
- (3) An increase or decrease in the number of parking spaces, or a change in the location of parking spaces for the vacation rental.
- (4) A change in ownership of the vacation rental.
- (5) A change in the identity or vehicle(s) of non-paying occupant(s).

(Ord. No. 1621, § 1, 6-7-2018)

Sec. 26.5-24. - Duration of vacation rental registration.

A vacation rental registration shall be valid for one (1) year after the date of registration.

(Ord. No. 1621, § 1, 6-7-2018)

Sec. 26.5-25. - Renewal of vacation rental registration.

A vacation rental owner must renew its registration annually prior to the expiration date of

the previous vacation rental registration.

(Ord. No. 1621, § 1, 6-7-2018)

Sec. 26.5-26. - Inspection of vacation rentals.

- (a) Inspection of a vacation rental to verify compliance with the Florida Building Code, and the Florida Fire and Life Safety Codes, which governed at the time of completion of the subject construction, shall be required subsequent to the initial registration of the vacation rental, and annually after each renewal. If instances of noncompliance are found, all such instances of noncompliance shall be handled as other violations of the Florida Building Code and Florida Fire and Life Safety Codes are otherwise handled in the city. These requirements will not be imposed so as to affect contracts that pre-exist the effective date of this ordinance (October 1, 2018).
- (b) Annual inspections shall be made by the city through appointment with the vacation rental owner or agent, as applicable. If a city inspector has made an appointment with vacation rental owner or agent, as applicable, for an inspection, and the city inspector is unable to complete the inspection as a result of an action or inaction of the vacation rental owner or agent, or an occupant of the vacation rental, the vacation rental owner shall be charged a "re-inspection" fee in an amount set by resolution of the city commission to cover the inspection expense incurred. The re-inspection fee shall be paid prior to scheduling the re-inspection. In addition, failure of a vacation rental owner or agent, as applicable, to make the vacation rental available for an inspection within twenty (20) days after notification by the city in writing that the city is ready to conduct the annual inspection, shall be a violation of this chapter punishable by a fine as set by resolution by the city commission. Such violation shall continue until the inspection is accomplished. Each day that such violation continues shall be a separate violation.

(Ord. No. 1621, § 1, 6-7-2018)

Sec. 26.5-27. - Transfer of vacation rental registration.

Vacation rental registrations are transferable only when the ownership of the vacation rental is sold or otherwise transferred, and the new owner has filed a modification of the registration with the city within thirty (30) days from the date of the sale or transfer. Failing such modification of the registration, any outstanding vacation rental registration as to that vacation rental shall be null and void on the thirty-first day after such sale or transfer.

(Ord. No. 1621, § 1, 6-7-2018)

Sec. 26.5-28. - Vested rights/waiver/estoppel.

A vacation rental registration shall not be construed to establish any vested rights or entitle the registered vacation rental to any rights under the theory of estoppel. A vacation rental registration shall not be construed as a waiver of any other requirements contained within the City of Cocoa Beach City Code or Comprehensive Plan, and is not an approval of any other code requirement outside this chapter. The registration of a vacation rental is not an approval of a use or activity that would otherwise be illegal under Florida law, the Florida Building Code, the Florida Fire Code or Life Safety Code, or in violation of the Cocoa Beach City Code or Comprehensive Plan.

(Ord. No. 1621, § 1, 6-7-2018)

Secs. 26.5-29—26.5-42. - Reserved.

Sec. 26.5-43. - Duties of vacation rental owner.

Every vacation rental owner or agent, as applicable, shall be available by landline or mobile telephone answered by the vacation rental owner or agent at the listed phone number twenty-four (24) hours a day, seven (7) days a week to respond to police, fire or other emergency personnel requests. Otherwise, response to contact by the city's regulatory personnel shall be required only Monday through Saturday, 9:00 a.m. to 6:00 p.m. Failure of the vacation rental owner or agent, as applicable, to fulfil this duty, shall be a violation of this ordinance which shall be punished by fine as set by resolution of the city commission.

(Ord. No. 1621, § 1, 6-7-2018)

Secs. 26.5-44—26.5-50. - Reserved.

ARTICLE III. - STANDARDS AND REQUIREMENTS FOR VACATION RENTALS

Sec. 26.5-51. - Generally.

The standards and requirements set forth in this article shall apply to the rental, use, and occupancy of vacation rentals in the City of Cocoa Beach.

(Ord. No. 1621, § 1, 6-7-2018)

Sec. 26.5-52. - Minimum safety and operational requirements.

Vacation rentals in the City of Cocoa Beach shall meet the applicable standards under the Florida Statutes, Florida Building Code and the Florida Fire Code and Life Safety Code, and each vacation rental shall have at least one (1) telephone with the ability to call 911.

(Ord. No. 1621, § 1, 6-7-2018)

Sec. 26.5-53. - Maximum occupancy based on site capacity/limitations/grandfathering.

- (a) The maximum occupancy of a vacation rental shall be stated in the vacation rental registration form, and shall be limited to two (2) occupants (as defined herein) per bedroom (as defined herein) plus two (2) occupants.
- (b) The maximum occupancy restriction as set forth above shall not apply when the property is owner occupied by the vacation rental owner.

(Ord. No. 1621, § 1, 6-7-2018)

Sec. 26.5-54. - Vacation rental agreements—minimum provisions.

Vacation rentals shall be rented, leased or occupied pursuant to a written rental agreement which contains, at a minimum, the following information:

- (1) Maximum occupancy of the vacation rental that is consistent with the vacation rental registration.
- (2)

The maximum number of vehicles that will be allowed to park at the vacation rental. Such number of vehicles shall not exceed the number of parking spaces located at the vacation rental as shown in the sketch submitted with the vacation rental registration, plus any other legal parking spaces that the vacation rental owner can show are available to the vacation rental.

- (3) A statement that a sketch of the permitted off-street parking locations where occupants may park according to the vacation rental registration sketch and any other legal parking spaces available to the vacation rental will be posted at the vacation rental.
- (4) A statement that all occupants must promptly evacuate from the vacation rental upon posting of any evacuation order issued by state or local authorities.
- (5) A copy of a document to be supplied by the city which includes excerpts from City of Cocoa Beach ordinance provisions of general application relevant to vacation rentals to include solid waste pick-up regulations, regulations related to sea turtles and sea turtle lighting, and City of Cocoa Beach Noise Ordinance, as specified by resolution of the city, as a lease addendum. The city will make available to vacation rental owners and agents a copy of such document in digital format upon request, and the city will post such document on its website.

(Ord. No. 1621, § 1, 6-7-2018)

Secs. 26.5-55—26.5-62. - Reserved.

Sec. 26.5-63. - Required providing of vacation rental and local information—Posting.

- (a) In each vacation rental, there shall be provided, in a prominent location, the following written information:
 - (1) The name, address and phone number of the vacation rental owner or agent, as applicable.
 - (2) The maximum occupancy of the vacation rental.
 - (3) A copy of a document to be supplied by the city which includes excerpts from City of Cocoa Beach ordinance provisions of general application relevant to vacation rentals to include solid waste pick-up regulations, regulations related

to sea turtles and sea turtle lighting, City of Cocoa Beach Noise Ordinance, notifications as to speed limits and driving information, and other relevant information, as specified by resolution of the City, as a lease addendum. The city will make available to vacation rental owners and agents a copy of such document in digital format upon request, and the city will post such document on its website.

- (4) The maximum number of vehicles that can be parked at the vacation rental, along with a sketch of the location of the off-street parking spaces.
 - (5) The days and times of trash pickup.
 - (6) The location of the nearest hospital.
- (b) There shall be posted, next to the interior door of each bedroom a legible copy of a building evacuation map— Minimum eight and one-half (8½) inches by eleven (11) inches.

(Ord. No. 1621, § 1, 6-7-2018)

ARTICLE IV. - EXEMPTIONS

Sec. 26.5-64. - Exemption for pre-existing rental agreements.

Notwithstanding any other provision of this ordinance, rental agreements with prospective occupants for vacations rentals that were pre-existing as of the enactment of this chapter 26.5, (hereinafter "pre-existing agreements") are exempt from the provisions of this ordinance.

If a vacation rental is cited for a violation of this chapter, (that would not be a violation if it were not for this chapter), when the vacation rental is occupied under the terms of a pre-existing agreement, the vacation rental owner may defend such violation based on the fact that the vacation rental was exempt from this chapter due to it being occupied pursuant to a pre-existing agreement. Such defense shall be determined based upon the following information, and upon any additional information supplied by the vacation rental owner or otherwise determined by the fact finder:

1. Copy of deposit or payment information evidencing that the agreement was a pre-existing agreement.
2. Copy of e-mail or other communication evidencing a binding Pre-existing

agreement.

3. Information from the occupant confirming that there was a binding agreement in a time-frame to make the agreement as pre-existing agreement under this chapter.

If it is reasonably determined by the city staff, and confirmed by the city's special magistrate that any information supplied to the City of Cocoa Beach in support of an application for exemption, or in support of a defense based upon pre-existing agreement, was intentionally false or fraudulent, the person supplying the false or fraudulent information shall be subject to a fine as set by the city commission by resolution.

(Ord. No. 1621, § 1, 6-7-2018)