

ORDINANCE NO. 1360

AN ORDINANCE OF THE CITY OF PANAMA CITY BEACH, FLORIDA, MAKING FINDINGS OF FACT RELATING TO CERTAIN ADVERSE EFFECTS OF UNSUPERVISED VACATION RENTALS BY OWNER; AMENDING THE CITY'S CODE OF ORDINANCES TO REGULATE SHORT TERM VACATION RENTALS BY OWNER AS PERMITTED BY STATE LAW; REQUIRING REGISTRATION OF EACH UNIT; REQUIRING DESIGNATION OF RESPONSIBLE PARTY FOR EACH UNIT; SPECIFYING MAXIMUM OCCUPANCY LIMITS; PROHIBITING CERTAIN ACTIONS BY OWNERS AND OCCUPANTS; ESTABLISHING CIVIL AND CRIMINAL PENALTIES FOR VIOLATION; PROVIDING LIMITED EXCEPTION FROM MAXIMUM OCCUPANCY LIMITS FOR CONTRACTS ENTERED PRIOR TO THE EFFECTIVE DATE OF THIS ORDINANCE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING AN IMMEDIATELY EFFECTIVE DATE.

W I T N E S S E T H:

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

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

WHEREAS, short-term vacation rental units are designated by Florida law as public lodging establishments the same as hotels, motels and bed and breakfast establishments; and

WHEREAS, the preemption bill provided for very little oversight from the state for short-term vacation rentals and as a result standards for short-term vacation rentals have become relaxed when compared to other public lodging establishments such as hotels, motels, and bed and breakfast establishments; and

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

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 Laws of Florida, hereafter "SB 356") which rescinded the previous preemption on local regulation of short-term vacation rentals, but also provided that a local law, ordinance, or regulation adopted after June 1,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

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

WHEREAS, single-family residential neighborhoods and their required infrastructure are generally designed to accommodate typical single-family residential homes with two (2) to five (5) persons per household on average; and

WHEREAS, local governments apply design standards tailored for residential neighborhoods to their roads, driveways, emergency services planning, public shelters, emergency evacuation plans, solid waste collection, utilities, buffers and the like; and

WHEREAS, residential and vacation condominiums and their required infrastructure are generally designed to accommodate typical single-family units with at least one full bathroom for every four (4) occupants on average; and

WHEREAS, condominiums are designed for limited occupancy and typical residential uses which do not include large and frequent parties at all times of the day and night; and

WHEREAS, permanent and long term single-family home and condominium residents inherently understand, know and generally respect their physical surroundings and their neighbors because they have daily familiarity with the neighborhood or condominium building and share a common interest in "getting along" with their neighbors, all of which tends to naturally limit excessive, bothersome and sometimes dangerous behavior and conditions; and

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

WHEREAS, the vacationing, short term occupants of transient rental units do not share that common understanding and self-interest and moreover are, by definition, “on vacation” which carries a cultural motivation to act more freely away from the daily routines of their lives at home, and in a residential neighborhood or a residential condominium that frequently leads to excessive, bothersome and sometimes dangerous behavior and conditions; and

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

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

WHEREAS, transient rental units located within established neighborhoods and condominiums can disturb their neighbors’ quiet enjoyment, lower property values, and burden the design layout of a typical neighborhood or condominium; and

WHEREAS, the presence of transient rental units within single-family dwelling units in residential neighborhoods and in residential condominiums creates negative compatibility impacts, among which include, but are not limited to, excessive noise, on-street parking, vehicular trespass on private property, accumulation of trash, and diminished public safety; and

WHEREAS, under Florida law, virtually all short-term vacation rental and transient rental units are “public lodging establishments” because they are either rented to transient guests more than three times in a calendar year or they are held out or advertised to the public as a place regularly rented to transient guests; and

WHEREAS, traditional public lodging establishments (hotels, motels, and bed &

breakfasts) are restricted by city zoning to commercial and other non-residentially zoned areas where intensity of uses is separated from less busy and quieter residential uses; and

WHEREAS, short-term vacation rentals with no application of mitigating standards when located in residential neighborhoods and condominiums create disproportionate impacts related to their size, frequently are over-occupied, and generate unruly behavior, all of which makes necessary some regulation; and

WHEREAS, the City finds that the adverse impacts of short-term vacation rentals are more frequent in condominiums than in detached, single family residential neighborhoods, but that conversely, when adverse impacts do occur in a single family neighborhood they are frequently more severe; and

WHEREAS, the City finds that when responsibly conducted the short-term vacation rental and transient rental business makes a valuable and needed contribution to tourism which is the primary industry of the City; and

WHEREAS, the City also finds, conversely, that irresponsible short-term vacation rental and transient rental operations materially harm the reputation of the City and tourism by creating localized public and private nuisances, including by way of example and not limitation, noise, destruction of property, accumulation and improper (or no) disposal of trash and garbage, illegal or unauthorized parking and trespass, drunkenness, underage drinking, illegal drug usage and dealing; and

WHEREAS, the owners of short-term vacation rental and transient rental properties frequently do not live in the neighborhood of the property they rent and do not experience the quality of life problems and negative impacts associated with unregulated short-term vacation rental and transient rentals in residential neighborhoods and condominiums; and

WHEREAS, short-term vacation rental and transient rental properties located in the City are frequently owned or controlled by persons who do not live in the City, in Bay County or even in the State of Florida; and

WHEREAS, the owners of short-term vacation rental and transient rental properties typically rely entirely upon their renter to personally occupy the unit (not transfer the unit to an unknown person), to not over-occupy the unit, to be respectful of their neighbors, to properly dispose of their garbage and trash and, generally, to not be a nuisance in the neighborhood or the condominium; and

WHEREAS, the experience of the City is that the short-term vacation rental and transient rental owner's reliance upon their renters in these matters is becoming increasingly misplaced and that other visitors and residents alike are bearing the consequences; and

WHEREAS, the City is experiencing increasing complaints from other visitors and residents about over-occupied short-term vacation rental and transient rental units, house or condo parties involving open access, excessive noise, rowdy and sometimes dangerous behavior, excessive alcohol and illegal drug use, underage drinking, destruction of property and accumulations of garbage and trash associated with short-term vacation rental and transient rental units in excess of that attendant to a typical residential occupancy; and

WHEREAS, as a governmental agency, the City is appropriately limited in its ability to enter private property and deal with inappropriate behavior before criminal mischief or worse occurs, leaving a broad range of activities to occur within short-term vacation rental and transient rental units that would not be tolerated in a traditional public lodging establishment such as a hotel or bed-and-breakfast under local management; and

WHEREAS, Florida law recognizes that sooner or later some guests of a public lodging establishment will become intoxicated, profane, lewd, brawling, indulge in language or conduct which disturbs the peace and comfort of other guests, or possess or deal in illegal drugs, and therefore authorizes the operator of the establishment to immediately require an unruly guest to leave or be arrested for a second degree misdemeanor (FS. 509.141); and

WHEREAS, the absentee owner of a short-term vacation rental or transient rental unit is frequently not immediately available to authorize anyone to enter the unit or deal with unruly guests before a crime is committed; and

WHEREAS, the City is not authorized to enter a short-term vacation rental or transient rental unit until it possesses probable cause that criminal activity is occurring or has occurred and even then a warrant may be required; and

WHEREAS, the City is discovering absentee owners who if contacted avoid taking responsibility for their unit, presumably believing that if the situation gets bad enough the police, or someone, will handle it; and

WHEREAS, Florida law authorizes the “appointed agent” of the owner of a public lodging establishment, including a short-term vacation rental or transient rental unit, to exercise all of the owner’s rights to eject undesirable guests, to refuse service to an undesirable guest and to be immune from criminal or civil liability for false arrest of a disorderly guest (FS 509.13(2); 509.141; 509.142 and 509.143); and

WHEREAS, the City finds that by requiring each short-term vacation rental and transient rental unit to have a responsible, natural person who resides in the community promptly available to exercise the rights of a public lodging operator and otherwise be aware of the use and condition of the unit, the problems being created by undesirable short-term vacation rental and transient rental guests will be dealt with more quickly and easily in each instance and, in addition, over time the frequency of those problems will be reduced as it becomes known that there is someone local who is responsible for the unit and can eject unruly guests if necessary.

NOW THEREFORE BE IT ORDAINED BY THE PEOPLE OF THE CITY OF PANAMA CITY BEACH:

SECTION 1. The forgoing recitals are incorporated as legislative findings of fact.

SECTION 2. From and after the effective date of this ordinance, Chapter 26 of the Code of Ordinances of the City is created as follows:

Chapter 26 – VACATION RENTALS BY OWNER

ARTICLE I. - IN GENERAL

Sec. 26-1. – Legislative intent.

The City intends to address the increasing problems associated with unsupervised short-term vacation rental and transient rental units (including without limitation, over-occupancy, open partying, excessive noise, parking in the street, vehicular trespass, underage drinking, illegal drug dealing and usage, and excessive trash and garbage accumulation) by establishing a mandatory, annual registration system specifying maximum occupancy, requiring routine, commercial garbage and trash service for the unit, requiring designation of a local person, either the owner or the owner's agent, to be responsible for the unit and authorized to address excess occupancy, nuisances and dangerous activity and to eject and deny access to unruly occupants and their guests, and to prohibit certain actions of owners and occupants. The purpose of requiring a local, responsible party is have someone locally aware of the condition and use of the unit who is authorized and able to quickly respond to complaints and immediate problems associated with the short-term vacation rental and transient rental unit and deal with unruly occupants or their guests as authorized by FS 509.141, 509.142 and 509.143.

Sec. 26-2. – Definitions.

As used in this Chapter the following words have the following meanings:

Guest means any person physically within the unit or upon its grounds with the knowledge of an occupant.

Maximum occupancy means the maximum number of persons who may be occupants of a unit at the same time and computed as provided in this chapter.

Occupant means any one of the number of patrons, customers, tenants, lodgers or boarders of a rental unit authorized by the rental agreement to sleep and bathe within the unit, and includes the guest of such a person if the guest intends to or does either sleep or bathe within the unit.

Owner means a natural or artificial person holding all or a divided or undivided interest in the fee title to a unit.

Responsible party means a natural person 21 years of age.

Rental unit means an individual unit or dwelling which is rented by its owner, or by its owner's agent, directly 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, excluding (i) any unit in a timeshare plan and (ii) any unit which is subject to supervision by immediate, on-site management 24 hours-a-day, 7 days-a-week authorized and equipped to prevent over-occupancy and to eject an unruly guest from such unit, such as in a traditional hotel. Rental unit includes short-term vacation rental units.

Sec. 26-3. – Prohibition.

- (a) No person shall rent, lease or occupy, or permit another to rent, lease or occupy, a rental unit situated within the City for a period of less than 30 days or one calendar month, whichever is less, unless there is affixed to the exterior of the primary entrance door of that unit a current and valid rental unit registration decal issued by the City to the owner of the unit and there is affixed to the interior side of the primary door of the unit a notice legibly setting out the information required there by this Chapter.
- (b) It shall be unlawful for any person to rent as landlord or tenant a rental unit situated within the City for occupancy in excess of its maximum occupancy.

- (c) It shall be unlawful for any person to be an occupant of a short term vacation rental unit situated within the City at any time that the number of occupants of the unit exceeds its maximum occupancy.
- (d) It shall be unlawful for any person to modify, alter or remove any valid and current registration decal, or apply the decal to any rental unit other than the unit for which it is issued.
- (e) It shall be unlawful for any person to modify, alter or remove the notice posted on the interior side of the primary door to the unit which sets out the information required there by this Chapter.

Sec. 26-4 – 10. Reserved.

ARTICLE II. – REGISTRATION DECALS

Sec. 26-11. – Application and issuance of registration decals.

The City Clerk or his or her designee shall issue to the owner or owners jointly of a rental unit who first apply each year an annual registration decal upon receipt of an application from the owner or owners of the unit containing all the following:

- (a) The name, address and telephone number of the unit owner(s) applying. If the unit owner is not a natural person, then additionally the names, addresses and telephone numbers of all the officers, managing members or partners of the entity.
- (b) The address of the unit, a copy of the complete and most recent record for the unit from the Bay County Property Appraiser's website, the name of the condominium or complex within which the unit is located if applicable, and any tradename used to market the unit.
- (c) The number of full bathrooms (sink, toilet and tub or shower) in the unit.
- (d) The name, address and telephone number(s) of the responsible party for the unit and the original of that person's written acceptance of a responsible party's duties set forth in this chapter, which acceptance is signed and acknowledged by the responsible party before a notary public. At the owner's option, the name, address and telephone number(s) of an alternate responsible party for the unit and the original of that person's written acceptance of a responsible party's duties set forth in this chapter, which acceptance is signed and acknowledged by the responsible party before a notary public. There shall only be one responsible party and one, optional alternate responsible party for each unit at any time. If qualified, the unit owner may be the responsible party or the alternate and shall execute the acceptance.
- (e) If the unit owner is not the responsible party, then the unit owner's original, written designation of the responsible party, and alternate if applicable, as the owner's agent to exercise all rights of the owner to deal with unruly occupants or their guests under FS. 509.141, 509.142 and 609.143, which designation must be signed and acknowledged by the owner before a notary public and state that it may be revoked only in writing and that the writing must include the designation of a new responsible party, be executed with the same formality as the original and not be effective until delivered to the City Clerk.

- (f) A copy of a business tax receipt for the unit obtained from the City.
- (g) A copy of the Florida Department of Business and Professional Regulation license of the unit as a transient public lodging establishment.
- (h) A copy of the Bay County Clerk of the Court registration certificate for the purpose of collecting and remitting tourist development taxes (bed tax) on transient rental of the unit.
- (i) A copy of the Florida Department of Revenue certificate of registration for the purposes of collecting and remitting state sales tax and surtax on transient rental of the unit.
- (j) Either (i) a copy of a contract with a local, commercial garbage company to provide not less than twice a week trash and garbage removal from the unit consisting of at least one residential container for every four, or fraction of four, of the number of maximum occupants, or (ii) evidence that the unit is located within a complex of units with routine, weekly trash and garbage removal service.
- (k) A copy of the notice required to be posted on the interior of the primary access door of the unit, and a statement that the original has been properly posted.
- (l) A statement by the owner/applicant, under penalty of perjury, that all application information is true and complete to the best of the owner's knowledge and belief.
- (m) Payment of an annual registration fee in the amount of \$45.00, or \$25 if application is made concurrently with a business tax application.

The City Manager is authorized and directed to adopt, and amend from time to time, such administrative policies and forms as may be necessary or convenient to implement this section. Submission of information required by this section that is materially false or so incomplete as to be materially misleading is a violation of this law.

Sec. 26-12. – Duties of the responsible party.

The duties of the responsible party, whether owner or owner's agent, are:

- (a) To be available by landline or mobile telephone at one of the listed phone numbers twenty-four hours a day, seven days a week and capable of handling any issues arising from the use of the unit;
- (b) To come to the unit within one (1) hour following notification from an occupant, the owner, or the City to address issues related to the short-term vacation rental;
- (c) To receive service of any legal notice on behalf of the owner for violations of this Chapter or other law;
- (d) To exercise all rights of the owner under FS. 509.141, 509.142 and 609.143 to deal with unruly occupants or their guests in the unit;
- (e) To maintain continuous compliance with the decal and all interior postings required by law; and
- (f) To otherwise monitor the unit at least once a week when rented to check upon the condition of the unit and the occupants' compliance with this Chapter.

- (g) To require all persons renting the unit to keep the responsible party informed of the names, addresses and if known the email addresses and telephone numbers of all persons renting the unit, the number of occupants for each rental period, and if the information is not constantly, accurately and timely provided then to immediately resign the position, immediately notify the owner and notify the city clerk in writing within three (3) business days of resignation.

Failure of a responsible party to discharge any one of these duties shall be a violation of this Chapter.

Sec. 26-13. – Content of registration decals.

Each registration decal shall be dated the day of issuance, uniquely numbered and clearly state the maximum occupancy limit for the unit. All decals shall expire one year after issuance. The City Manager is authorized to determine the form of the decal from time to time and to include such other information as he or she determines useful in implementing the purpose of this law. There shall be only one decal outstanding for a unit at any given time. A replacement decal shall not be issued unless the applicant for it affirms under oath that the original has been lost or destroyed and promises to return it to the city if found before expiration.

Sec. 26-14. – Content of interior unit posting.

A notice shall be posted on the interior of the primary door of the unit clearly specifying:

- (a) The name, address and telephone number of the responsible party for the unit and explaining that an occupant may contact the responsible party if there are any issues with the unit.
- (b) The fact that Florida law authorizes the responsible party to summarily eject and deny access to occupants or their guests who become intoxicated, profane, lewd, brawling, or engage in any conduct which disturbs the peace and comfort of others.
- (c) The maximum occupancy of the unit, including registered occupants and their guests.
- (d) The location of garbage and trash containers, the days and times of pickup and the pickup location; and if the pickup location is different from the storage location, that the occupant is required to return the container after pickup if the collector does not.
- (e) The City Manager is directed to prepare a general form of the notice which registrants may choose to use as a guide to facilitate compliance.

Sec. 26-15. – Computation of maximum occupancy.

Maximum occupancy of a rental unit shall be four persons per air-conditioned, full bathrooms (sink, toilet and bath or shower).

Sec. 26-16 – 20. Reserved.

ARTICLE III. – ENFORCEMENT

Sec. 26-21. – Intent and finding.

Violations of this Chapter 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 rental units' responsible parties are responsive and responsible in the management of the property for compliance with this Chapter. Nonetheless, the City does find and determine that repeated violations of this Chapter present a serious threat to the public health, safety and welfare which is irreparable and irreversible and are of an itinerant or transient nature. Therefore, and pursuant to Florida Statutes Chapter 162, Part II, the City hereby establishes and imposes the civil infraction penalties set forth in this Article III.

Sec. 26-22. – Warnings and civil penalties.

Each day (any 24 consecutive hour period) that a violation of this Chapter occurs or continues shall constitute a separate, civil infraction punishable by a civil penalty in the amount specified below

- (a) A warning shall be issued for first-time violations and may have a correction/compliance period associated with it. Such warnings may include notice to other agencies for follow-up, such as the Department of Business and Professional Regulation, the Department of Revenue, the Bay County Clerk of Court and the Bay County Property Appraiser, as applicable. Non-compliance within a correction compliance period shall constitute a second violation.
- (b) Second violation: \$200.00
- (c) Third and all subsequent violations: \$500.00 and as otherwise provided by law. The financial penalty for the third and all subsequent violations shall be cumulative to any other penalty which may be provided by law.
- (d) A person who does not contest a violation shall be subject to a civil penalty in the following amount which may be paid directly to the City Clerk:

Second violation . . . \$100.00.

Third and all subsequent violations: \$300.00, and as otherwise provided by law. The financial penalty for the third and all subsequent violations shall be cumulative to any other penalty which may be provided by law.
- (e) Repeat violations may relate to different requirements imposed by this law, but must relate to the same unit.

Sec. 26-23. – Civil Penalty Procedure.

Violations of this Chapter may be enforced by the issuance of a civil citation by a sworn police officer of the City who has reasonable cause to believe that a person has violated this section. All sworn police officers of the City shall be considered code enforcement officers for the purpose of enforcing this section. A citation issued under this section may be contested in the County Court for Bay County, Florida The civil citation shall contain the matters specified in § 162.21 Florida Statutes (2013), or subsequent, superseding legislation, in form approved by the

Chief of Police. Any person who willfully refuses to sign and accept a citation issued pursuant to this section shall be guilty of a misdemeanor of the second degree, punishable as provided in §§ 162.21(6), 775.082 and 775.083, Florida Statutes or subsequent superseding legislation.

Sec. 26-24. – Criminal Penalties.

Notwithstanding the civil penalties provided in this Article, any person found to have willfully failed to comply with any provision of this Chapter shall be guilty of an offense punishable as provided in Section 1-12 of the Code. Each day (24 consecutive hour period) that a violation occurs or continues shall be a separate offense.

SECTION 3. The prohibition of occupancy in excess of maximum occupancy specified in Section 2 shall not apply to written rental agreements entered before [_____, ___, 2015 or the effective date of this ordinance.]

SECTION 4. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict.

SECTION 5. The appropriate officers and agents of the City are authorized and directed to codify, include and publish in electronic format the provisions of this Ordinance within the Panama City Beach Code, and unless a contrary ordinance is adopted within ninety (90) days following such publication, the codification of this Ordinance shall become the final and official record of the matters herein ordained. Section numbers may be assigned and changed whenever necessary or convenient.

SECTION 6. This Ordinance shall take effect immediately upon passage.

PASSED, APPROVED AND ADOPTED at the regular meeting of the City Council of the City of Panama City Beach, Florida, this ____ day of _____, 2015.

MAYOR

ATTEST:

CITY CLERK

EXAMINED AND APPROVED by me this ____ day of _____, 2015.

MAYOR

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