

**PLANNING AND ZONING BOARD**

**THURSDAY, FEBRUARY 15, 2018  
@ 6:00 P.M.**



# City of Indian Rocks Beach

1507 Bay Palm Boulevard • Indian Rocks Beach, Florida 33785 • [www.indian-rocks-beach.com](http://www.indian-rocks-beach.com)

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## AGENDA PLANNING AND ZONING BOARD/ LOCAL PLANNING AGENCY

City Commission Chamber  
1507 Bay Palm Boulevard  
Indian Rocks Beach, FL 33785

Thursday, February 15, 2018  
6:00 p.m.

1. **ROLL CALL.**
2. **APPROVAL OF MINUTES OF:** November 16, 2017.
3. **DISCUSSION OF ORDINANCE NO. 2018-01.** Short-Term Rentals.
4. **ADJOURNMENT.**

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**APPEAL:** If a person decides to appeal any decision made with respect to any matter discussed at such meeting or hearing, will need a record of the proceedings and for such purposes, they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based, per s. 286.0105, F.S. Verbatim transcripts are not furnished by the City of Indian Rocks Beach and should one be desired, arrangements should be made in advance by the interested party (i.e. court reporter).

In accordance with the Americans with Disability Act and s. 286.26, F.S., any person with a disability requiring reasonable accommodation in order to participate in this meeting should contact the City Clerk's office with your request telephone 727/595-2517 or fax 727/595-4627 no later than four (4) days prior to the proceeding for assistance.

POSTED: February 8, 2018

**AGENDA ITEM NO. 2**

**Approval of Minutes**

**MINUTES  
CITY OF INDIAN ROCKS BEACH  
PLANNING AND ZONING BOARD AND  
LOCAL PLANNING AGENCY**

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The Regular Meeting of the Indian Rocks Beach Planning and Zoning Board and the Local Planning Agency was held on **THURSDAY, NOVEMBER 16, 2017**, in the City Commission Chambers, 1507 Bay Palm Boulevard, Indian Rocks Beach, Florida.

Chair McFall called the meeting to order at 6:00 p.m.

**1. ROLL CALL:**

Present: Chair Rick McFall  
Vice Chair Patricia Muneio  
Board Member Jude Bond  
Board Member Robert Clark  
Board Member Joe McCall  
City Planner Hetty C. Harmon, AICP  
City Attorney Randy D. Mora

Absent: Board Member Richard Antepenko  
Board Member John Patronis

*(To provide continuity for research, items are listed in agenda order although not necessarily discussed in that order.)*

**2. APPROVAL OF MINUTES OF: August 17, 2017.**

**MOTION MADE BY MEMBER CLARK, SECONDED BY VICE CHAIR MUNIEO, TO APPROVE THE AUGUST 17, 2017 MINUTES AS SUBMITTED. UNANIMOUS APPROVAL.**

**3. DISCUSSION OF ORDINANCE NO. 2017-15. Repeal and replace Article V. Planned Unit Development (PUD), of the Code of Ordinance.**

City Attorney Mora read Ordinance No. 2017-15 by title only.

City Attorney Mora advised the Board that they are reviewing the ordinance in the capacity of the Planning and Zoning Board as all planned unit development (PUD) applications per the City Code.

City Attorney Mora advised the Board that this ordinance will also be reviewed by the Local Planning Agency per City Code Section 2.131(5) for compliance with the City's Land Code.

Planner Harmon stated Ordinance No. 2017-15 repeals and replaces Article V, Planned Unit Development, stating staff has rewritten the entire PUD Section of the Code.

The following items have been eliminated from the PUD Section of the Code of Ordinances:

- The requirement permitting the PUD in only the RM-2 and CT zoning districts.
- Property size requirement, previously was one (1) acre.
- Cluster and Zero Lot Line Development Section.
- Specific commercial activities permitted as accessory uses.

The following items have been added or expanded:

- PUD is allowed in every zoning district except the Single-Family Residential zoning district.
- Expanded the "purpose and intent" of the PUD district.
- Added justification and minimum requirements for the rezoning to a PUD.
- Clarified the rezoning process for a PUD.
- Development Review Committee.
- Application Requirements.
- PUD Ordinance and Public Hearings.
- Defines minor adjustments to the approved PUD.
- Defined the time limits for a PUD.
- Permit Process.
- Unified control of the property.
- Phasing of the PUD.

Member Bond inquired if Ordinance No. 2017-15 would allow for a serious impact on business development because some of that zoning area would become residential.

Planner Harmon stated the guidelines of each zoning district will be followed.

City Attorney Mora stated it does not change the permitted use, the City will still abide by the uses. PUDs allow for flexibility in the actual construction and specifications. PUDs are more for flexibility in the construction process and less having to do with the permitted use in the zoning district.

Member McCall clarified that PUDs will be allowed in all zoning districts, except for the Single-Family Residential zoning district.

Member Bond inquired what are the real implications in terms of current development.

City Attorney Mora stated the real implication is that the City will now be able to have PUDs in a broader area. At present, because of the square foot or unit requirement, it is virtually impossible to have a PUD on any of the Gulf Boulevard vacant lots. It is staff's opinion that PUDs may encourage development and while encouraging development, simultaneously allowing the City and the developer more flexibility in reaching a structure that abides by the City's view and/or goals.

Chair McFall stated he likes a lot of the elements of the proposed ordinance such as the deletion of the one acre, but there are a few areas that concern him and one of those is height limits. He has no problem with height from a standpoint of extra feet for an elevator shaft, but he does have a problem with trading floors versus floor area ratio or in exchange for green space.

Chair McFall stated developers want maximum square footage for what is available on the property and that is the only determining factor; it is all about the "dollar".

Chair McFall stated "height" has been a contentious issue in IRB ever since he has lived here, 1997.

Chair McFall stated it does allow an increase in density to some respect and inquired if the schedule of fees cover the City's costs for a PUD application, permit, site review, inspections.

Chair McFall stated another concern of his is "political balance". For what he can see between the old versus the new, in the old version, there is a mechanism by which the Planning and Zoning Board has a stop order involved. It is one of the few areas in the City Code where that exists. In the City Code, the Planning and Zoning Board has three options: (1) Preliminary approval as submitted, (2) Preliminary approval with reservations, and (3) Disapproval and in this case, is a stop. The application does not go forward until the Planning and Zoning Board approves it.

Chair McFall explained the PUD application will be reviewed by the Development Review Committee, made up of staff members, instead of being reviewed by the Planning and Zoning Board. This takes the fiduciary responsibility of the Planning and Zoning Board and gives it to the Development Review Committee.

Chair McFall stated the Development Review Committee is potentially subject to the "political influence" coming from the City Commission and thereby the checks and balance has been eliminated in this equation when it comes to PUDs.

City Attorney Mora stated Chair McFall is referring to current Code Section 110-644, Procedure for review and approval, Subsection (3)(a.)(b.)(c.), which states the Planning and Zoning Board will review the application, and after completion of the review, will make recommendations and it enumerates them as: (1) Preliminary approval as submitted, (2) Preliminary approval with reservations, and (3) Disapproval. If disapproved by the Planning and Zoning Board, the developer may make changes and resubmit. He explained the "and resubmit" does suggest that it terminates the process; however, the powers and duties of the Planning and Zoning Board states the Planning and Zoning Board "shall review PUDs".

City Attorney Mora stated as drafted, it removes the up or down with the ability to terminate a process that staff or the City Commission may otherwise desire to move forward in its current form. It is unique in that in all other respects the Board is "advisory".

City Attorney Mora stated Chair McFall's point is well taken, and staff will advise the City Commission that the Planning and Zoning Board has expressed some concern and reservation about the loss of the Planning and Zoning Board's power, and it would be up to the City Commission if that is something they would like to reincorporate in to the proposed ordinance.

City Attorney Mora stated part of the reason why this was removed was to streamline the process, not allow the will of the City Commission to be subverted by a subordinate board, and to bring this provision in concert with a more modern code.

Chair McFall stated Indian Rocks Beach is not like other communities, IRB is a unique beach community by desire. There are a lot of these checks and balances that exist and potentially are the reason why IRB is the way it is.

City Attorney Mora stated Chair McFall is noting currently there is a degree of resident control; whereas it would be transiting to, as proposed by staff, to resident input.

Chair McFall clarified the proposed ordinance is using the term "protected trees" as it is otherwise defined in the Landscaping Chapter of the Code of Ordinances.

Chair McFall inquired if there are penalties if the structure is not built as presented and submitted.

Planner Harmon stated the Building Department would address those issues during the construction phase, site inspection and as-built inspection.

Chair McFall referred to Section 110-650, Time limits, (2), Extensions of Time, recommending such extension may be granted for a maximum "up to two years" be changed to "not to exceed four years" per extension request.

***CONSENSUS OF THE BOARD TO AMEND THE SECTION 110-650, TIME LIMITS, (2), EXTENSIONS OF TIME, RECOMMENDING SUCH EXTENSION MAY BE GRANTED FOR A MAXIMUM "UP TO TWO YEARS" BE CHANGED TO "NOT TO EXCEED FOUR YEARS" PER EXTENSION REQUEST.***

Chair McFall stated he noticed the deletion of the requirement for a rapid referral to the Planning and Zoning Board within 30 days of the application process.

City Attorney Mora stated it is to reflect the realities on the ground, and staff did not want to create an artificial deadline the City may not be able to abide by under all circumstances. He stated this proposed ordinance was drafted using a model ordinance from another community.

Chair McFall inquired if the following language can be added: "a review by the Planning and Zoning Board shall be done in a timely manner".

City Attorney Mora recommended inserting language along the lines of "in a timely manner" or "within a reasonable timeline" in Section 110-645, Process for rezoning property to PUD zoning district, Subsection (c)(1.).

Planner Harmon stated the whole point of a Development Review Committee is to discuss the City Code and what is and is not going to fly with the developer.

Chair McFall stated the proposed ordinance deletes the 30% open space requirement, with Planner Harmon replying PUDs will follow the impervious surface ratio (ISR) requirements for each zoning district and will have to apply to all other City Code and Building Code requirements.

City Attorney Mora stated the broader point is to foster flexibility by taking out the hard fast numerical requirements in this component of the City Code.

Member Bond stated the proposed ordinance eliminates basic requirements the community counts on as far as how the town is developed.



City Attorney Mora stated the proposed ordinance does not eliminate any City Code requirements; they all remain in place. The proposed ordinance overlays a district and allows for the City to be flexible with certain City Code requirements. It is a give and take between the City and the developer.

Member McCall inquired what can be built within a PUD.

Planner Harmon stated the east side of Gulf Boulevard is zoned "Business" where business is required on the first floor with residential on the second floor. However, all residential units are a permitted use by special exception in the Business district along Gulf Boulevard.

City Attorney Mora stated a PUD is not an entitlement, it is an alternative process toward development approval.

City Attorney Mora stated a PUD is a method for developers to submit unique proposals that may not be provided for or allowed in other zoning districts. The PUD zoning district allows for a mix of residential and nonresidential uses and/or unique design features which might not otherwise be allowed in one of the other listed districts.

In response to Member McCall's inquiry, City Attorney Mora stated this does not create an absolute entitlement to develop in a certain manner. The City retains its Home Rule Power, Legislative Power, Law Enforcement discretion in enforcement of the City's Land Use Code, and from a legal analysis, this does not open the City up to litigation in that sense.

City Attorney Mora stated commercial development sometimes opens up litigation.

Vice Chair Muneio stated the proposed ordinance does not specifically state that it will come back to the Planning and Zoning Board for review.

City Attorney Mora stated the proposed ordinance states that it must go to the Planning and Zoning Board and the City Commission. It specifically contemplates that the Planning and Zoning Board will review PUD applications and make the nonbinding recommendation to the City Commission, but it does remove the Board's ability to terminate the process upon the Board's review.

City Attorney Mora stated if it is the Board's desire to amend Section 110-645, Process for rezoning to PUD zoning district, Subsection (c)(1.) to be more explicit by breaking it down to a one and two, and make it clear a PUD Application will be

presented to the Planning and Zoning Board for review and recommendation and then a two that it will then be presented to the City Commission.

***CONSENSUS OF THE PLANNING AND ZONING BOARD THAT LANGUAGE IN SECTION 110-45, PROCESS FOR REZONING TO PUD DISTRICT, SUBSECTION (C)(1.) CONCERNING REVIEW BY THE PLANNING AND ZONING BOARD BE MORE EXPLICIT.***

Chair McFall discussed zero lot lines when the developer goes to Pinellas County and changes the designation of a property into two separate parcels, making both parcels nonconforming.

City Attorney Mora stated he does not understand how Chair McFall's issue fits in the context of a PUD development. He understands that is another land use issue in the community.

City Attorney Mora inquired if Chair McFall is talking about an element that was removed from the PUD ordinance.

Planner Harmon stated the proposed ordinance eliminates zero lot lines and each element of a proposed PUD will be addressed by staff, the Planning and Zoning Board, and the City Commission.

In response to Chair McFall's inquiry, City Attorney Mora stated the current PUD ordinance contemplates the possibility of having cluster zero lot line developments. He stated by removing the language and diagram, it discourages zero lot lines; there is not an explicit recommendation of it as an alternative. That is not to say that it is impossible.

City Attorney Mora stated staff has seen the problems with zero lot lines and that would be a kind of flexibility that would be disfavored from a staff's standpoint and not something that would be recommended by staff.

City Attorney Mora stated the proposed ordinance is cleaning it up, modernizing it, and streamlining the process. This is not creating new flexibility, it is making it easier to apply it in some of the lots where it would not be currently permitted to do based on those thresholds.

Member Clark reiterated Chair McFall's concerns about eliminating the Planning and Zoning Board's power for PUD Applications.

**CONSENSUS OF THE PLANNING AND ZONING BOARD THAT STAFF EXPRESS TO THE CITY COMMISSION, THE BOARD'S CONCERNS ABOUT ELIMINATING THE PLANNING AND ZONING BOARD'S POWERS FOR PUD APPLICATIONS.**

There was no public present to comment.

**MOTION BY VICE CHAIR MUNEIO, SECONDED BY MEMBER BOND, TO FAVORABLY RECOMMEND APPROVAL TO THE CITY COMMISSION PROVIDED THE CITY COMMISSION REVIEWS THE PLANNING AND ZONING BOARD'S RECOMMENDATIONS.**

<b>ROLL CALL VOTE:</b>	<b>BOND</b>	<b>AYE</b>
	<b>CLARK</b>	<b>AYE</b>
	<b>MC CALL</b>	<b>NAY</b>
	<b>MUNEIO</b>	<b>AYE</b>
	<b>MC FALL</b>	<b>NAY</b>

**MOTION CARRIED BY A VOTE OF 3 TO 2.**

**4. ADJOURNMENT.**

**MOTION MADE BY MEMBER CLARK, SECONDED BY VICE CHAIR MUNEIO, TO ADJOURN THE MEETING AT 7:05 P.M. UNANIMOUS APPROVAL.**

February 15, 2017  
Date Approved

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Frederick "Rick" McFall

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**AGENDA ITEM NO. 3**

**ORDINANCE NO. 2018-08**  
**Short-Term Rentals.**



THOMAS J. TRASK, B.C.S.\*  
JAY DAIGNEAULT  
RANDY MORA  
ERICA F. AUGELLO  
JOHN E. SCHIAEFER


*\* Board Certified by the Florida Bar in  
City, County and Local Government Law*

## MEMORANDUM

DATE: May 3, 2016

TO: R.B. Johnson, Mayor/Commissioner  
Terry Hamilton-Wollin, Vice-Mayor/Commissioner  
Phil Hanna, Commissioner  
Joanne "Cookie" Kennedy, Commissioner  
Edward Hoofnagle, Commissioner

CC: Gregg Mims, City Manager

FROM: Randy Mora, City Attorney 

RE: Short Term Rental Regulations in the City of Indian Rocks Beach

Below is a memorandum analyzing the City of Indian Rocks Beach's (the "City's") ordinances regulating short term rentals, their enforceability, and potential courses of action available to the City to address this issue in the future.

### I. EXECUTIVE SUMMARY

Local government regulation of short term rentals, especially in beach communities, has changed a great deal in the past five years. In 2011, the Florida Legislature (the "Legislature") first preempted local governments' ability to prohibit or restrict the use, classification or occupancy of short term rentals. Later, in 2014, the Legislature again amended the preemption statute, replacing the broader language from 2011 with a prohibition on local government regulation of the frequency or duration of short term rentals.

As a consequence of legislative action by the City following the Legislature's preemption of the matter, the City's existing restrictions on the operation, duration or frequency of short term rentals are presently unenforceable. If the City desires to regulate short term rentals in the future, it must do so in a manner that does not regulate their duration or frequency. Though the City is unable to prohibit short term rentals, there are alternative regulations the City may consider to address this issue.

The alternative and admittedly more difficult course of action would be for the City to advocate before the Legislature to repeal the preemption statute. This would restore local governments' home rule powers and allow them to address issues in their communities directly.

This remains a dynamic area of law throughout Florida, and any restrictions the City adopts may be met by a legal challenge.

## II. BACKGROUND INFORMATION

### A. HOME RULE AND PREEMPTION GENERALLY

A municipality has home rule powers to enact legislation on any subject upon which the Legislature may act, except, among other things, any subject that is expressly prohibited by the Constitution or *any subject that is expressly preempted to state or county government* by the Constitution or by general law.<sup>1</sup> In determining whether local laws and the actions of local government are in contravention of a state statute, courts look to whether the statute expressly preempts that area.<sup>2</sup>

### B. LEGISLATIVE PREEMPTION RELATIVE TO SHORT TERM RENTALS

In 2011, the Florida Legislature passed House Bill 883 (“HB 883”) explicitly preempting the authority of local governments to pass a law, ordinance or regulation restricting the use of vacation rentals based solely on their **classification, use, or occupancy**.<sup>3</sup> The Legislature restricted the preemptive effect of the statute to any law, ordinance, or regulation adopted on or after June 1, 2011.<sup>4</sup>

In 2014, the Legislature again amended Fla. Stat. § 509.032, this time through the passage of Senate Bill 356 (“SB 356”). SB 356 provides that local governments cannot “prohibit vacation rentals or regulate the **duration or frequency** of rental of vacation rentals.”<sup>5</sup> The law also prevents local governments from adopting ordinances or regulations prohibiting vacation rentals, through zoning or otherwise.<sup>6</sup> Even so, SB 356 returned some power to local governments by rescinding the preemption over the regulation of the classification, use or occupancy of short term rentals. SB 356 preserved the grandfathered status of municipal regulations adopted on or before June 1, 2011.<sup>7</sup>

A copy of the 2010, 2011, and 2014 versions of the Fla. Stat. § 509.032 (7) are attached here as **Composite Exhibit 1**.

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<sup>1</sup> Fla. Stat. § 166.021

<sup>2</sup> Eisenberg v. City of Miami Beach, 1 F. Supp. 3d 1327, 1348 (S.D. Fla. 2014)

<sup>3</sup> Fla. Stat. § 509.032 (7) (b) (2011)

<sup>4</sup> Fla. Stat. § 509.032 (7) (b) (2011)

<sup>5</sup> Fla. Stat. § 509.032 (7) (b) (2014)

<sup>6</sup> Fla. Stat. § 509.032 (7) (b) (2014); see also Fla. Att’y Gen. Op. 2014-09

<sup>7</sup> Fla. Stat. § 509.032 (7) (b) (2014)

## C. LOCAL REGULATIONS

### i. County Ordinances

Though the County has an ordinance regulating temporary lodging, that Ordinance does not preempt or otherwise supplement the City's regulation of short term rentals. On October 16, 2007, the County adopted ordinance 07-50, modifying ordinance 89-4.<sup>8</sup> This Ordinance amended the Rules Concerning the Administration of the Countywide Future Land Use Plan, with several provisions concerning the classification of "temporary lodging."

The passage of this ordinance led to an extensive dialogue between the Pinellas Planning Council and the City, and ultimately the passage of broad changes to the City's regulation of transient or temporary lodging.

### ii. City Ordinances Concerning Short Term Rentals

In 2010, the County recommended the City amend its code to align with the County's land use plan. This meant adopting definitions and regulations modifying the City's previous use of the "transient living accommodations" classification, to the "temporary lodging use" classification. The City began the process of incorporating these revisions in 2011.

On or about July 12, 2011, weeks after HB 883 took effect, the City adopted Ordinance 2011-03 (the "2011 Ordinance"), implementing these changes. A copy of the 2011 Ordinance is attached here as **Exhibit 2**. This modernization of the City's land development code included a change both to the name and substantive definition of these properties. Specifically, the City changed the definition to apply to properties offering, advertising or operating under a lease of less than one month, more than three times in a single year. The previous definition for "transient living accommodations" included leases for less than three months and was less detailed. The new definition for "temporary lodging use" was more restrictive. This amendment represented a substantive change to the classification and use of transient or temporary lodging within the City. This change invalidated any restrictions on short term rentals, following the Legislature's 2011 preemption of the matter.

On September 19, 2012, the City adopted Ordinance 2012-08 (the "2012 Ordinance"), further amending its restrictions regarding short term rentals. A copy of the 2012 Ordinance is attached here as **Exhibit 3**. The 2012 Ordinance included affirmative prohibitions on the classification, use and duration of short term rentals. Most notably, the 2012 Ordinance again amended the definition of a "temporary lodging use" and reverted back to a definition concerning occupancy of less than three months. These restrictions concerning the classification, use, and duration of short term rentals were invalid upon their adoption in 2012 or invalidated by the Legislature's 2014 amendments to Fla. Stat. § 509.032.

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<sup>8</sup> Pinellas County Ordinance 07-50 (2007)

As a result of the City's 2011 and 2012 Ordinances, the prohibitions and restrictions in the City's code are presently unenforceable.

### **III. RECENT LEGAL DEVELOPMENTS CONCERNING SHORT TERM RENTALS**

#### **A. FLAGLER COUNTY**

In February 2015, Flagler County passed a robust ordinance attempting to regulate those elements of short term rentals that remain subject to local regulation (the "Flagler Ordinance").<sup>9</sup> A copy of the Flagler Ordinance is attached here as **Exhibit 4**. Flagler County, fully aware of the Legislature's preemption of the matter, attempted to enact a series of creative regulations targeted at short term rentals and the common problems associated therewith without regulating duration and frequency. The "WHEREAS" clauses of the Flagler Ordinance, wherein the legislative body explains and justifies its action, span nearly ten pages by themselves. The Flagler Ordinance, for example, requires a short term rental certificate from the county, a business tax receipt, a Florida Department of Revenue certificate of registration, and a Florida Department of Business and Professional Business Regulation license. In addition to registration requirements the Flagler Ordinance goes on to include minimum requirements governing safety, occupancy, parking standards, solid waste management, and advertising for short term rental properties.

Two rental home companies in Flagler County sued seeking declaratory and injunctive relief from the Flagler Ordinance for its alleged derogation of the Legislature's preemption.<sup>10</sup> In June 2015, the Flagler County Court ruled against the Plaintiff, allowing most of the restrictions in the Flagler Ordinance to remain in place. The ruling did find the Flagler Ordinance unconstitutional to the extent it applied to vacation rental contracts that pre-dated its effective date.

The Plaintiffs appealed the court's ruling to the Fifth District Court of Appeals.<sup>11</sup> The Fifth DCA affirmed the lower court's opinion on January 12, 2016. Within 24 hours of the Fifth DCA's order, the Flagler County Commission passed an amended version of the ordinance regulating vacation rentals.

#### **B. CURRENT LEGAL LANDSCAPE**

There is an ongoing effort to lobby the legislature to abandon or limit the scope of its preemption. In the most recent legislative session several legislators introduced bills attempting to broaden the power of local governments to regulate short term rentals. None of these bills were passed or signed into law.

The Flagler Ordinance and subsequent litigation are being used as a template for the viability of short term rental restrictions in the current statutory regime. Many other local governments have modeled their own ordinances after Flagler's. Indeed, another municipality in

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<sup>9</sup> Flagler County Ordinance 2015-02.

<sup>10</sup> See 30 Cinnamon Beach Way, LLC, et al. v. Flagler County, Case No. 2015-CA-000167

<sup>11</sup> See 30 Cinnamon Beach Way, LLC, et al. v. Flagler County, Case No. 5D15-2296



Pinellas County recently incorporated registration requirements similar to those implemented in Flagler County.

Regardless of Flagler County's success, any effort to implement and enforce new restrictions is likely to be met with litigation. The same city in Pinellas County that adopted the registration restrictions has already been sued seeking a declaration that those restrictions are invalid.

#### IV. CONCLUSION

The City's current restrictions concerning short term rentals have been preempted by the Legislature, owing to passage of the City's 2011 and 2012 Ordinances.

The City's best legal remedy to this problem is in Tallahassee, not in its City Hall. The most effective solution would be for the City, and other similarly situated local governments to seek the legislative repeal of the preemption statute. Local governments need the ability to regulate the duration and frequency of these tenancies. Without the repeal of the preemption statute, local ordinances governing the attendant problems caused by short term rentals will only serve as a band-aid on a more chronic issue. As the elected representatives of your City, it is up to you to determine whether and how to best implement the changes your community needs.

Presently, the City cannot prohibit short term rentals, through zoning restrictions or otherwise. The City can still regulate short term rentals, but must do so in a manner that does not restrict their duration or frequency. If the City chooses to regulate or restrict short term rentals in any manner it should do so in a manner consistent with those restrictions it finds desirable from the Flagler Ordinance. It remains likely that whatever restrictions the City adopts, however meritorious or legitimate, are likely to be challenged in court.

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**CITY OF INDIAN ROCKS BEACH  
ORDINANCE NO. 2018-01**

**AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF INDIAN ROCKS BEACH, FLORIDA, INCORPORATING RECITALS AS FINDINGS OF FACT; AMENDING CHAPTER 110 OF THE CITY'S LAND DEVELOPMENT REGULATIONS TO ADD ARTICLE IX - "SHORT TERM VACATION RENTALS; ADDING SECTION 110-840 ESTABLISHING APPLICABILITY; ADDING SECTION 110-841 ESTABLISHING DEFINITIONS; ADDING SECTION 110-842 ESTABLISHING MINIMUM REGISTRATION REQUIREMENTS FOR SHORT TERM VACATION RENTALS; ADDITION SECTION 110-843 ESTABLISHING MINIMUM LIFE SAFETY REQUIREMENTS AND AN INSPECTION REGIME; ADDING SECTION 110-844 ESTABLISHING THE REQUIREMENTS AND DUTIES OF DESIGNATED RESPONSIBLE PARTIES; ADDING SECTION 110-845 ESTABLISHING MINIMUM REQUIREMENTS FOR RENTAL USE AGREEMENTS; ADDING SECTION 110-846 CONCERNING REQUIRED POSTINGS ON SHORT TERM VACATION RENTALS; ADDING SECTION 110-847 ESTABLISHING VIOLATIONS; ADDING SECTION 110-848 ESTABLISHING THE REMEDIES, PENALTIES AND ENFORCEMENT MECHANISMS FOR VIOLATIONS OF THIS ARTICLE; PROVIDING FOR CODIFICATION AND REVISION OF SCRIVENER'S ERRORS; PROVIDING FOR FULL FORCE AND EFFECT OF ORDINANCE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, prior to 2011 Florida's local governments freely 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) ("HB 883") which preempted the local regulation of a specific land use commonly called short term vacation rentals; and

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

**WHEREAS**, following the enactment of HB 883 the City of Indian Rocks Beach (the "City") adopted Ordinance 2011-03, modifying its ordinances concerning the regulation of short term vacation rentals; and

**WHEREAS**, a little more than a year later the City adopted Ordinance 2012-08, further amending its restrictions regarding short term rentals; and

**WHEREAS**, the 2014 Florida Legislature enacted Senate Bill 356 (Florida Chapter 2014-71, Laws of Florida) (“SB 356”) which rescinded HB 883’s preemption on local regulation of short term vacation rentals, but provided that local laws, ordinances or regulations adopted after June 1, 2011 may not prohibit short term vacation rentals or regulate the duration or frequency of rental of vacation rentals; and

**WHEREAS**, SB 356 returned some local control back to municipalities to mitigate the effects of short term vacation rentals in an attempt to make them safer, more compatible with existing neighborhood regulations, and accountable for their proper operation; and

**WHEREAS**, SB 356 does not allow local governments to prohibit short term vacation rentals in any community or zoning district; and

**WHEREAS**, single-family residential neighborhoods and their required infrastructure are generally designed to accommodate typical single-family residential homes with two (2) or (3) persons per household, on average; and

**WHEREAS**, local governments apply design standards tailored for their roads, driveways, emergency services planning, public shelters, solid waste collection, utilities, buffers, and are also tailored in assessing their infrastructure impacts and their corresponding fair and proportionate impact/connection fees; and

**WHEREAS**, short-term vacation rental occupants, due to the transient nature of their occupancy, are unfamiliar with local hurricane evacuation plans, the location of fire extinguishers, residence exit routes, pool and home safety features, and other similar safety measures that would ordinarily be provided to guests in traditional lodging establishments; and

**WHEREAS**, short-term vacation rentals locating within established neighborhoods can disturb the quiet enjoyment of the neighborhood; and

**WHEREAS**, traditional lodging establishments (hotels, motels and bed and breakfasts) are typically restricted to commercial and other non-residentially zoned areas where intensity of uses is separated from less busy and quieter residential uses; and

**WHEREAS**, many multi-unit condominium short-term vacation rentals have on-site property managers and employees or other contracted vendors that oversee the maintenance, upkeep, security and/or operation of the property on a frequent basis, unlike those short term rentals operating in single family homes; and

**WHEREAS**, the majority of the complaints or issues the Town of Indian Rocks Beach encounters concerning the operation of short term rentals pertain to the single and two-family neighborhoods east of Gulf Boulevard; and

**WHEREAS**, many local jurisdictions in the State of Florida, and across the nation have standards in place to minimize the negative impacts caused by short-term vacation rentals; and

**WHEREAS**, the City of Indian Rocks Beach desires to encourage short-term vacation rentals that are safe, fit in with the character of the community, provide positive impacts for tourism, increase property values, and achieve greater neighborhood compatibility; and

**WHEREAS**, these regulations are deemed necessary by the City of Indian Rocks Beach Commission to preserve the City’s aesthetic and property values while also protecting the health, safety and general welfare of permanent residents, lot/parcel owners, investors and transient occupants and visitors alike; and

**WHEREAS**, these regulations are being promulgated by the City of Indian Rocks Beach Commission to supplement, but not to replace, any existing federal or state law or regulation, or other controls within establishes residential neighborhoods served by a homeowner or condominium association; and

**WHEREAS**, these regulations do not regulate duration or frequency of rentals, but are intended to address the frequent change of many transient occupants housed within a dwelling within an established residential neighborhood; and

**WHEREAS**, the application of minimum life/safety requirements to short-term vacation rentals, along with other minimum standards and requirements concerning issues such as the designation of responsible parties ensures that transient occupants are provided with a similar level of protection as is required by the current statutes and codes for residences utilized as hotels, motels and other similar lodging establishments;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF INDIAN ROCKS BEACH, PINELLAS COUNTY, FLORIDA, that:**

**SECTION 1. RECITALS AND FINDINGS**

- A. The above Recitals are incorporated herein as Findings of Fact.
- B. The City of Indian Rocks Beach Commission further finds as follows:
  - a. The proposed amendment will provide for the orderly development of the City of Indian Rock Beach and complies with applicable Comprehensive Plan goals, objectives and policies; and
  - b. The proposed amendment will serve to protect the health and safety of residents and transient visitors alike.

**SECTION 2.** That Part II, Code of Ordinances, Subpart B – Land Development Regulations, Chapter 110 – Zoning, is hereby amended by adding Article IX, to read as follows:

**Article IX – Short Term Vacation Rentals**

**DIVISION 1 – GENERALLY**

§ 110-840 – Applicability. This section shall apply to all structures used for the purposes of short term vacation rentals as permissible commercial businesses when operating within the single family (“S”), medium density (“RM 2”), and medium density duplex residential (“RM 1”) districts.

§ 110-841 - Definitions. The following terms as used on this Article are defined as set forth hereinafter:

Bedroom: The term “bedroom” shall have the same meaning as in § 381.0065 (2) (b), Florida Statutes. Throughout this chapter, the term “sleeping room” shall mean the same thing as a “bedroom.”

Designated Responsible Party: The Owner, or any person eighteen (18) years of age or older designated by the owner, tasked with responding to requests for inspections, complaints, and other problems relating to or emanating from the short-term vacation rental of the transient public lodging establishment. There shall only be one designated responsible party for each short-term vacation rental.

Owner: The term “owner,” shall mean the person or entity holding legal title to the short term vacation rental property, as reflected in the Pinellas County Tax Collector’s records.

Short-term vacation rental: A structure which is also a “transient public lodging establishment,” within the single family (“S”), medium density (“RM 2”), and medium density duplex residential (“RM 1”) districts. As used in this chapter, the term short term vacation rental shall mean the same thing as a “vacation rental.”

Transient occupants. 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 short term vacation rental. There shall be a rebuttable presumption that any person who holds themselves out as being an occupant or guest of an occupant of a short term vacation rental is a transient occupant, as defined here.

Transient public lodging establishment. A structure, which is rented to guests more than three (3) times in a calendar year for periods of less than thirty (30) days or more or one (1) calendar month, whichever is less, or which is advertised or held out to the public as a place rented to guests within the single family (“S”), medium density (“RM 2”), and medium density duplex residential (“RM 1”) districts. A “transient public lodging establishment” shall be considered a non-residential, commercial business, whether operated for profit or as a not for profit and be subject to the additional requirements of this chapter if the transient public lodging establishment is additionally considered to operate as short term vacation rental as defined herein.

## DIVISION II - REQUIREMENTS

**§ 110-842 – 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 this Article, without initially and then on a continuing basis:

1. Obtaining a Florida Department of Revenue certificate of registration for purposes of collecting and remitting tourist development taxes, sales surtaxes, and transient rental taxes; and
2. Obtaining a Florida Department of Business and Professional Regulation license as a transient public lodging establishment.
3. After first securing a certificate from the Department of Revenue, and a license from the Florida Department of Business and Professional Regulation, an applicant may then obtain a business tax receipt from the City of Indian Rocks Beach pursuant to Chapter 58 of the City's Code of Ordinances;

**§ 110-843 – Short-Term Vacation Rental Standards**

1. Minimum life/safety requirements. All short term vacation rentals shall comply with all applicable safety requirements, including but not limited to the Residential Swimming Pool Safety Act, Florida's Building Code, and Florida's Fire Prevention Code.
2. Inspections
  - a. Inspection of a vacation rental to verify compliance with the City's Code of Ordinances and other applicable safety codes, which governed at the time of completion of the subject construction, may be required subsequent to registration with the City and annually after each renewal. If instances of noncompliance are found, all such instances of noncompliance shall be handled as other violations of the City's Code of Ordinances, 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 chapter.
  - b. Annual inspections may 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 totaling \$75.00. 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 20 days after notification by the city in writing that the city is ready to conduct an inspection, shall be a violation of this chapter punishable by a fine as provided for in section 1-15 of this Code. Such violation shall continue until the inspection is accomplished. Each day that such violation continues may be deemed a separate violation.

### 3. Parking Standards

There shall be one off-street parking space for each bedroom. Garage space shall count only if the space is open and available and the transient occupants are given vehicular access to the garage.

### 4. Other standards.

Any other standards contained in the City's Code of Ordinances and Land Development Code shall apply to short term vacation rentals as well. This shall include but not be limited to regulations concerning noise, setbacks, stormwater and other similar provisions.

## **§ 110-844 Responsible Party**

1. Posted Contact Information. The name and phone number of the Designated Responsible Party, as defined in this Article, shall be posted on the front exterior of the dwelling in a place accessible to the public. The sign must be non-illuminated and be one square foot in size on each side. The sign's background color shall be white, and the font shall be in black Times New Roman or Arial font, and in no smaller than 48 point typeface. The Sign must be constructed of weather resistant wood or plastic.
2. Duties. The duties of the short term vacation rental responsible party, whether that person be the property owner or an agent thereof, are to:
  - a. be available at the posted landline or mobile telephone number twenty-four (24) hours a day, seven (7) days a week and capable of directly responding, or directing a designated agent to directly respond to and resolve any issues or concerns raised by City staff or law enforcement officials arising from the short-term vacation rental use;
  - b. be authorized to receive service of any legal notice on behalf of the owner of the property for violations of this section; and
  - c. Maintain a record of all rental/lease agreements for the short term vacation rental property.
  - d. Otherwise monitor the short-term vacation rental unit at least once a week to assure continued compliance with the requirements of this section.

## **§ 110-845 Short Term Vacation Rental/Lease Agreement Minimum Provisions.**

1. There shall be a written lease, rental, tenant or other recorded usage agreement memorializing each tenancy in a vacation rental, between the owner of the short term vacation rental property and any lessees or tenants. These agreements shall contain, among other things, the tenant's agreement to the regulations contained in this Article.
2. The rental/lease agreement must contain the following information at a minimum:
  - a. The name and ages of all persons who will be occupying the unit.
  - b. The dates on which the renters or lessees will be occupying the unit.
  - c. A statement that all occupants must promptly evacuate the short term vacation rental upon posting of any evacuation order issued by state or local authorities.
  - d. The City reserves the right to request and receive a copy of any Lease Agreement for the short term vacation rental from the Owner or designated responsible party.

#### **§ 110-846 Required Posting.**

It shall be required that the following information be posted in a visually unobstructed area within each short term vacation rental unit:

1. The name and phone number of the designated short-term vacation rental responsible party required by this Article;
2. Notice that all occupants of short term vacation rental units must comply with Chapter 26 of the City's Code of Ordinances, governing noise, nuisances, litter and abandoned property;
3. The scheduled days of trash pickup and recycling; and
4. The location of the nearest hospital.

#### **§ 110-847 Offenses/Violations.**

1. Non-compliance with any provisions of this Article shall constitute a violation of this Article
2. Each day a violation exists shall constitute a separate and distinct violation.

#### **§ 110-848 Remedies/Enforcement.**



1. Violations of this Article 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 short term vacation rental program it is key that short-term vacation rental designated responsible parties are responsive and responsible in the management of the property for compliance with this section. Any code enforcement activities will be pursued in accordance with Florida Statutes Chapter 162 and the City's Code of Ordinances.
2. Warnings. Warnings shall be issued to the owner of the property or their designated responsible party and include a correction/compliance period. Such warnings may include notice to other agencies for follow-up. Agencies that may be notified include but are not limited to the Department of Business and Professional Regulation, the Florida Department of Revenue, the Pinellas County Tax Collector, the Pinellas County Property Appraiser, or Florida's Fish and Wildlife Conservation Commission as applicable. Non-compliance with a correction/compliance period shall result in the issuance of a citation.
3. Fines. Fines per violation shall increase, on a graduated basis based on the recurrence of individual violations
  - a. The first (1st) offense shall result in a fine of \$150;
  - b. The second (2nd) offense shall result in a fine of \$300; and
  - c. The third (3rd) offense, and any further repeat violations, shall result in a fine of \$500.

The City may prosecute any code enforcement violations pursuant to its full and complete authority as set forth in Chapter 162 of Florida Statutes and its own Code of Ordinances. The City may also rely on an appropriate enforcing agency at the state or local level.

4. Additional Remedies. Nothing contained herein shall prevent the City from seeking all other available remedies which may include but not be limited to injunctive relief, liens, and other civil and criminal penalties as provided by law, as well as referral to other enforcing agencies.

### **SECTION 3. CODIFICATION AND SCRIVENER'S ERRORS**

The provisions of this Ordinance shall be included and incorporated into the Code of Ordinances of the City of Indian Rocks Beach, Pinellas 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.

**SECTION 4. FULL FORCE AND EFFECT OF EXISTING PROVISIONS**

In all other respects, the provisions of the City's Code of Ordinances not hereby amended or modified shall remain in full force and effect.

**SECTION 5. 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 6. EFFECTIVE DATE**

This ordinance shall take effect immediately upon its passage.

**PASSED ON FIRST READING** on the \_\_\_\_ day of \_\_\_\_\_ 2018, by the City Commission of the City of Indian Rocks Beach

**PUBLISHED** this \_\_\_\_ day of \_\_\_\_\_ 2018, in the Tampa Bay Times newspaper

**ADOPTED ON SECOND AND FINAL READING** on the \_\_\_\_ day of \_\_\_\_\_ 2018, by the City Commission of the City of Indian Rocks Beach, Florida.

\_\_\_\_\_  
Mayor/Commissioner

ATTEST:

\_\_\_\_\_  
Deanne B. O'Reilly, MMC, City Clerk

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Randy D. Mora, City Attorney

**AGENDA ITEM NO. 4**

**ADJOURNMENT**