



CITY OF PUNTA GORDA  
OFFICE OF THE CITY ATTORNEY  
M E M O R A N D U M

To: Mayor Rachel Keesling  
From: David M. Levin, City Attorney  
Date: October 2, 2018  
Subject: Regulation of Vacation Rentals

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Around ten or so years ago, internet services made it significantly easier for owners of single family residences to advertise and rent their homes to vacationers. Services like Vacation Rental by Owner ([www.vrbo.com](http://www.vrbo.com)) and AirBnb.com resulted in an exponential increase in the short-term rental of homes within traditional single-family residential neighborhoods. These services also caused an increase in the rental of condominium units.

In response to growing complaints relating to noise, parking, trash and life-safety issues associated with the short-term rentals, local governments began adopting ordinances to protect residential neighborhoods by prohibiting short-term or “vacation rentals”. As the number of such ordinances increased, special interest groups seeking to protect the growing “vacation rental” industry began lobbying the Florida Legislature for protection.<sup>1</sup> Such efforts resulted in the Legislature’s enactment of Chapter 2011-119, Laws of Florida.

Chapter 2011-119, Laws of Florida, codified as Section 509.032(7)(b), Florida Statutes, prohibited local governments from adopting any local law, ordinance, or regulation which “restrict the use of vacation rentals, prohibit vacation rentals or regulate vacation rentals based solely on their classification, use, or occupancy.”

Said Act classified a “vacation rental” as a “public lodging establishment” regulated by the Division of Hotels and Restaurants of the Florida Department of Business and Professional Regulation. The Act defined a “vacation rental” as “any unit or group of units in a condominium, cooperative, or timeshare plan, or individually or collectively owned single-family, two-family, or four-family house or dwelling unit that is also a ***transient public lodging establishment***.” (Emphasis Added).

Section 509.013(4)(a)(1), Florida Statutes (2011) defined the term “transient public lodging establishment” to mean, “any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a

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<sup>1</sup> See Final Bill Analysis for Bill # CS/CS/CS/HB 883.

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.”

By definition, “vacation rentals” were any condominium unit or other residential dwelling unit which was rented to guests for less than 30 days, more than three times in a calendar year. Even if such a unit was not in fact rented, it would still be considered as a “vacation rental” if it was advertised for rent for periods of less than 30 days.

In 2014 the Florida Legislature adopted Chapter 2014-71, Laws of Florida which amended the “vacation rental” preemption contained in Section 509.032(7)(b), Florida Statutes. As amended, said Section provides, in pertinent part, “A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of vacation rentals.”

As the law presently stands, the City of Punta Gorda cannot prohibit condominium units or private residences from being rented to guests for less than 30 days, more than three times in a calendar year. In other words, the City cannot regulate how many times a condominium unit or private residence can be rented during a calendar year. So long as the unit is rented for no longer than 29 days per lease, there is no limit to how many times that unit can be rented.

The 2014 amendment, however, did open the door for local government regulation of “vacation rentals”, provided such regulations do not prohibit the use of property as a “vacation rental” or regulate the duration or frequency during which the property can be used as a “vacation rental”. Following the 2014 amendment, a number of local governments adopted ordinances to regulate “vacation rentals” within the parameters set forth in said new law.

For example, in November 2015 the City of Anna Maria adopted an ordinance providing for the regulation of “vacation rentals”. Said ordinance imposed maximum occupancy limits for “vacation rentals”, required annual registration for “vacation rentals”, required inspection of “vacation rentals” for compliance with the Florida Building Code and Florida Fire and Life Safety Codes, imposed duties upon “vacation rental” owners, and provided minimum provisions for “vacation rental” agreements. Since the adoption of its ordinance, the City of Anna Maria has been the target of over 100 lawsuits claiming damages in excess of \$35 million.<sup>2</sup>

Some local governments have adopted ordinances simply establishing minimal “vacation rental” license/registration requirements. Others have found a “happy medium” between these two types of regulatory schemes.

The City of Punta Gorda does not presently have any Codes specifically pertaining to “vacation rentals.” Many of the adverse impacts reported to be associated with “vacation rentals” can be ameliorated by enforcement of the City’s existing Codes through action taken against the property owner. Repeated Code violations can be addressed by increasing the severity of fines and, if necessary, civil action in the nature of injunctive relief for public nuisances, against the property owner.

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<sup>2</sup> See, House of Representatives Staff Analysis, Bill # CS/HB 773, February 23, 2018.

Pursuant to Section 509.241(1), Florida Statutes, anyone seeking to rent any dwelling unit or group of such units 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, must obtain the appropriate “public lodging establishment” license from the Division of Hotels and Restaurants of the Florida Department of Business and Professional Regulation.

Any person desiring to rent a dwelling unit within the City of Punta Gorda as a “vacation rental” will be required to first obtain a Local Business Tax Receipt from the City in accordance with the provisions of Chapter 12, Punta Gorda Code. Pursuant to the provisions of Section 509.271, Florida Statutes, before the City may issue a Local Business Tax Receipt, the applicant must provide evidence of a currently valid “public lodging establishment” license from the Division of Hotels and Restaurants of the Florida Department of Business and Professional Regulation.

Additionally, pursuant to Chapter 12, Section 12-6, Punta Gorda Code, prior to the issuance of a Local Business Tax Receipt, a dwelling unit to be used for the purposes of a “vacation rental” shall be inspected by the City of Punta Gorda for compliance with the City’s zoning, building, and fire codes.

The regulation of “vacation” or “short-term” rentals is a hot topic which is likely to receive additional attention by the Florida Legislature. Bills have been considered proposing greater State pre-emption, and others proposing more Home Rule authority. Given the political uncertainty of this subject, the City might consider the best course of action to enforce its existing Codes applicable to all residential uses and to strengthen such Codes, if necessary, as opposed to singling out “vacation rentals”.

c.c.: Howard Kunik, City Manager