



MEMORANDUM

To: Lynn Gelin, City Attorney

From: Chad S. Friedman, Esq. 
Sarah Johnston, Esq. 

Date: June 21, 2021

RE: City of Delray Beach (the "City") Vacation Rental Preemption

I. INTRODUCTION

You have asked our Firm to review the City's vacation rental legislative history to determine whether or not the adopted provisions are preempted under Florida law. Specifically, the City's vacation rental legislation consists of Ordinance 29-09 adopted on July 7, 2009, Ordinance 03-12 adopted on February 12, 2012, Ordinance 08-12 adopted on February 21, 2012, Ordinance 40-12 adopted on November 6, 2012, and Ordinance 31-12 adopted on November 20, 2012 (Collectively, the "Vacation Rental Legislation"). This memorandum will provide our opinion regarding the preemption issue and will provide guidance in implementing the Vacation Rental Legislation.

II. SHORT ANSWER

Subsequent to June 1, 2011, the City adopted four (4) ordinances (03-12, 08-12, 31-12, 40-12) regulating vacation rental use. Both Ordinances 08-12 and 31-12, which amended Chapter 117 of the City Code, are "business regulations" and do not regulate duration or frequency of rentals. Therefore, such ordinances are not subject to the state preemption.

Ordinances 03-12 and 40-12 are "land development regulations" that, in part, regulate the duration or frequency of vacation rentals such as redefining transient residential use ("TRU") in the single family ("SF") and planned residential development ("PRD") districts so that a change in occupancy more than 3 times a year was no longer permitted, a change in occupancy more than 6 times a year was now prohibited in the RM district, and adding zoning districts to the areas where TRU was prohibited. Thus, these portions of the Ordinances are not enforceable and are preempted under Florida Law. The preempted provisions would be severed from the Ordinances and those provisions would revert to the applicable provisions in Ordinance 29-09, adopted on July 7, 2009, consistent with the severability provision.¹

Notwithstanding the preempted provisions, the portions of the Ordinances which were not preempted are valid and enforceable. A summary of the enforceable Vacation Rental Legislation and an analysis of the amended code sections is attached as Composite Exhibit "A."

¹ In preparing this opinion, we have reviewed and relied upon the ordinances and documents provided. We have assumed the ordinances and documents are accurate, valid and have been adopted in accordance with Florida law. We have not investigated the validity, authenticity, or accuracy thereof.

III. VACATION RENTAL PREEMPTION BACKGROUND

Since 1993, the State of Florida has preempted the regulation and inspection of public lodging establishments in Sec. 509.032(7), Fla. Stat. In 2011, the Florida Legislature expanded the preemption to include the following language:

“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, responding to push back from local governments, the Legislature amended Sec. 509.032(7)(b), Fla. Stat. to provide the following:

“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 2014 amendment limited the preemption to regulations governing the duration or frequency of vacation rentals and maintained the grandfather provision for ordinances adopted prior to June 1, 2011. This change allowed local governments to adopt new ordinances addressing regulatory matters such as noise, parking, registration, and signage requirements for vacation rentals so long as they did not result in regulating the duration or frequency of such rentals.

IV. CITY VACATION RENTAL LEGISLATIVE HISTORY

A. **Land Development Regulations-Transient Residential Use**

In 2009, the City adopted Ordinance 29-09 amending City Code Section 4.3.3 *Specific Requirements for Specific Uses* by adding subsection ZZZ *Transient Residential Use* (Ordinance 29-09 is attached as Exhibit “B”). The effect of this code amendment was to define transient residential use (“TRU”), prohibit the use in certain districts, provide for exceptions, waivers, reasonable accommodations, penalties and severability (a summary of the enforceable Vacation Rental Legislation and an analysis of the amended code sections is attached hereto and included as part of Composite Exhibit “A”).

In 2012, the City adopted two ordinances which amended Code Section 4.3.3 *Specific Requirements for Specific Uses*. Ordinance 03-12, adopted on February 12, 2012, amended the definition of TRU and the exceptions and penalty provisions. Later that year, Ordinance 40-12, adopted on November 6, 2012, revised the definition of TRU, added land use districts where TRU was regulated, added exceptions, amended the waiver procedures, penalty language and removed TRU from the list of permitted uses in the Medium Density Residential (“RM”) district.

B. **Business Regulation-Landlord Permits**

In 2012, the City adopted two additional ordinances relating to vacation rentals by amending Chapter 117 *Landlord Permits*. Ordinance 08-12, adopted on February 21, 2012, revised existing landlord permit requirements to add conditions on the issuance of a permit, amended the application requirements, and added requirements for landlords and tenants. Subsequently, Ordinance 31-12, adopted on November 20, 2012, removed a rental amount requirement in the landlord permit applications.

V. POST-JUNE 1, 2011, CODE AMENDMENTS

A. Grandfathered Regulations

The preemption provision of Sec. 509.032(7)(b), Fla. Stat. does not apply to any local law, ordinance or regulation adopted on or before June 1, 2011. On June 1, 2011, the provisions of Ordinance 29-09 were in place and included the following regulations on vacation rentals:

- TRU was defined as a dwelling that was operated or used in such a way that it has a turnover in occupancy or more than six (6) times in any one year;
- TRU was prohibited in SF and PRD Districts and was permitted in the RM District;
- Waiver process for economic hardship;
- the section was subject to the existing reasonable accommodation process;
- penalties for violations in the SF District was established;
- a severability clause; and
- TRU was added to the list of permitted uses in the RM District.

Amending an ordinance that was in place prior to the June 1, 2011, deadline does not automatically invalidate the protection under the grandfather provision in 509.032(7)(b), Fla. Stat. *Op. Att’y Gen. Fla. 20-05 (2005); Op. Att’y Gen. Fla. 19-07 (2019)*. In addition, an ordinance enacted prior to June 1, 2011, will not lose its grandfathered protection under the statute with regard to provisions that are reenacted (re-adopting the same regulations that existed prior to June 1, 2011) or provisions that are not preempted, but new provisions regulating duration or frequency of vacation rentals would be barred. *Id.*

B. Preempted Regulations

Subsequent to June 1, 2011, the City adopted four (4) ordinances (03-12, 08-12, 31-12, 40-12) regulating vacation rental use. Ordinance 08-12 and 31-12 which amended Chapter 117 of the City Code, are “business regulations” and do not regulate duration or frequency of rentals. Therefore, such Ordinances are not subject to the preemption. However, Ordinances 03-12 and 40-12 did, in part, regulate the duration or frequency of vacation rentals (an analysis of the amended code sections, including the preempted provisions is included and attached hereto as Composite Exhibit “A”.) Thus, these portions of the Ordinances are not enforceable and are preempted under Florida Law.

When an action is taken without the requisite authority, that is deemed to be an “ultra vires” act (an act performed without authority.) *Orlando Orange Groves Co. v. Hale*, 144 So. 674 (Fla. 1932). When a city performs an ultra vires act, the act is void, having no legal effect as if it did not exist. *Crowell v. Monroe County*, 578 So.2d 837 (Fla. 3rd DCA 1991); *Bhoola v. City of St. Augustine Beach*, 588 So.2d 666 (Fla. 5th DCA 1991); *Edwards v. Town of Lantana*, 77 So.2d 245 (Fla. 1955); and, *Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957).

As noted above, both Ordinance 03-12 and 40-12 included, in part, duration or frequency provisions relating to vacation rentals. Therefore, the City was without the requisite authority to adopt those portions of the Ordinances and as a matter of law these preempted provisions were void.

C. Severability

Ordinances 03-12 and 40-12 contained numerous code amendments and only a portion of which were preempted. The portions of the ordinances that were not preempted included an amendment to the definition of dwelling, the addition of “and their family” to the property owner

exception, and amendments to the waiver procedures (for a comprehensive list of the amendments that were/were not preempted refer to Composite Exhibit "A".)

Notably, both Ordinances 03-12 and 40-12 contain a severability clause. Florida law favors, where possible, severance of invalid portions of a law from the valid portions. *State v. Calhoun*, 126 Fla. 376 (Fla. 1936) holding "It is a well-established principle of statutory construction that the language of a statute should be so construed as to preserve its constitutionality rather than to defeat it"; See also, *Lowe v. Broward County*, 766 So. 2d 1199 (Fla. 4th DCA 2000) holding "[s]everability is a judicial doctrine recognizing the obligation of the judiciary to uphold the constitutionality of legislative enactments where it is possible to strike only the unconstitutional portions." When a portion of legislation is invalid the remainder of the legislation is permitted to stand provided that the valid provisions can be separated, the legislative purpose of the valid provisions can be accomplished independently and after the invalid provisions are stricken, a complete ordinance remains. *Coral Springs Street Systems, Inc. v. City of Sunrise*, 371 F.3d 1320 (11th Cir. 2004).

Notwithstanding the invalid provisions which attempted to regulate duration or frequency of vacation rentals, Ordinance 03-12 clarified references to a dwelling to include "the entire dwelling unit or any part thereof" and the exception for real property owners of a dwelling to include "their families", and amended the staff contact for the waiver process to be consistent with other staff references within the same subsection. The Ordinance, without the invalid provisions, remains a valid and complete ordinance, capable of being independently implemented and accomplishes the legislative purpose of clarifying references to dwellings and a real property owner exception and amending staff contacts for consistency within the same subsection.

Similarly, in addition to the invalid provisions, Ordinance 40-12 amended the City's waiver for undue hardship process by adding sections for notice of proposed decision and an appeal process. The changes to the waiver for undue hardship section contains code amendments which stand on its own as a valid and complete ordinance, capable of being implemented without the invalid portions and accomplishes the legislative intent of amending the waiver process.

VI. CONCLUSION

The Vacation Rental Legislation is, in part, invalidated by the preemption provided in Florida Law. The provisions of the Vacation Rental Legislation that are not preempted would be valid and effective from the date of the corresponding ordinance. The invalidated provisions would be severed from the remaining adopted ordinances and the code regulations would revert to the regulations in Ordinance 29-09. The analysis of the ordinances and the enforceability of the vacation rental land development regulations is included in Composite Exhibit "A".

COMPOSITE EXHIBIT "A"

1. SUMMARY OF ENFORCEABLE VACATION RENTAL LAND DEVELOPMENT REGULATIONS
2. ANALYSIS OF THE CODE AMENDMENTS CONTAINED IN ORDINANCE 03-12, 40-12, 08-12, AND 31-12
 - Ordinance No. 03-12
 - Ordinance No. 40-12
 - Ordinance No. 08-12 and Ordinance No. 31-12
3. SYNOPSIS OF THE ENFORCEABLE PROVISIONS IN ACCORDANCE WITH THE EXISTING CODE SECTIONS 4.3.3, 4.4.6, AND APPENDIX "A"

COMPOSITE EXHIBIT "A"

1. SUMMARY OF ENFORCEABLE VACATION RENTAL LAND DEVELOPMENT REGULATIONS

- Transient Residential Use (TRU) is defined as a dwelling unit or part thereof which turns over in occupancy more than six (6) times per year.
- TRU is prohibited in single-family and planned residential development districts.
- TRU is permitted in medium density residential districts.
- Penalties are enforceable against TRU in the single-family district.

COMPOSITE EXHIBIT "A"

2. ANALYSIS OF CODE AMENDMENTS IN ORDINANCE NO. 03-12, 40-12, 08-12, AND 31-12

Ordinance No. 03-12

Amendments to the transient residential use ("TRU") definition included in Section 4.3.3 (ZZZ) and Appendix "A" Definitions:

- Changed the reference from dwelling to "entire dwelling unit or any part thereof;
- Changed TRU to mean a change in occupancy more than 3 times a year in single family ("SF") and planned residential development ("PRD") zoning districts (formerly it was defined as 6 times per year); and
- Changed TRU to mean a change in occupancy more than 6 times a year in medium density residential ("RM") districts and to prohibit the use (effectively, prohibiting a change in occupancy more than 6 times a year where it was permitted in the 2009 code amendment.)

The amendment to the definition of TRU in the SF, PRD and RM zoning districts results in a regulation on the duration or frequency of vacation rentals.

Amendments to Exceptions/Exemptions included in Section 4.3.3:

- Changed subsection (a) to allow existing TRU with more turnover more than 3 and less than 6 times per year to continue for 12 months after the effective date of the ordinance; and
- Added "and their family" to the exemption for real property owners of a dwelling unit.

Although the change to subsection (a) purports to allow TRU to continue for another year, this is a regulation on the frequency of vacation rentals in SF and PRD districts which was not included in the pre-2011 code. The exemption is subsection (c) adding "and their family" to the exemption does not regulate the duration or frequency of vacation rentals.

Amendments to Waiver for Undue Economic Hardship included in Section 4.3.3:

- Changed the reference from Director of Neighborhood Services Department to "Community Improvement Director" which is consistent with an earlier staff reference in the same section.

This change has no impact on duration or frequency of vacation rentals.

Amendments to Penalties for Violations included in Section 4.3.3:

- Amended the penalties to apply to any property owner that rents, licenses, subleases, or otherwise allows the use of a dwelling in a PRD zoning district with a change in occupancy more often than 3 times a year (formerly this applied to SF zoning district when the change in occupancy exceeded six times per year); and
- Amended the penalties to apply to dwellings located in the RM zoning district when the change in occupancy exceeded 6 times per year (formerly this was permitted).

These amendments regulate [by attaching penalties] the duration or frequency of vacation rentals in the SF, PRD and RM zoning districts.

Amendments to Severability included in Section 4.3.3:

- Added a severability clause which provides that if the section is unconstitutional the earlier version of the section adopted as Ordinance 29-09 shall be substituted.

This does not regulate duration or frequency of vacation rentals.

COMPOSITE EXHIBIT "A"

Text with (red) ~~strikethrough~~ represents preempted provisions.

Highlighted text represents the text that is not deleted.

All other amendments remain.

ORDINANCE NO. 03-12

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING SECTION 4.3.3, "SPECIFIC REQUIREMENTS FOR SPECIFIC USES", BY AMENDING SUBSECTION 4.3.3(ZZZ), "TRANSIENT RESIDENTIAL USE", IN ORDER TO CLARIFY PROHIBITIONS, EXEMPTIONS/ EXCEPTIONS, WAIVERS, AND PENALTIES FOR SAME; AMENDING APPENDIX "A", "DEFINITIONS", IN ORDER TO AMEND THE DEFINITION OF "TRANSIENT RESIDENTIAL USE"; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission hereby finds and declares that the leasing, renting, licensing, subleasing or otherwise allowing in any manner or form the use of single-family residential dwelling units for periods of less than twelve (12) months with a turnover in occupancy more often than three (3) times per year to any person, entity or family, is a non-residential activity and is not considered an accessory use customarily accessory and incidental and subordinate to the primary intended purpose of dwellings, *See, Schwarz v. City of Treasure Island*, 21 Fla.L.Weekly Fed. C11541 (11th Cir. 2008); and

WHEREAS, the Census Data collected by the U.S. Census Bureau in 2010 provides that the average family size is 2.24 people in the City of Delray Beach; and

WHEREAS, transient residential uses often maximize occupancy causing increased pressure on infrastructure, including: garbage, sewer, water, roadways, and utilities; code enforcement, law enforcement, fire protection and inspection services; and

WHEREAS, transient residential uses can result in increased noise and traffic in single-family residential communities; and

WHEREAS, unless regulations are placed on the amount and location of transient uses, such uses could overwhelm the non-transient related single-family residential community making the City of Delray Beach a less attractive place to reside; and

WHEREAS, transient residential uses can be incompatible with permanent and seasonal residential uses if not properly planned, controlled and regulated; and

WHEREAS, the rapid turnover in occupancy associated with transient residential uses can be a disruptive influence on the peaceful use and enjoyment of single family residential areas; and

WHEREAS, reserving land for single family residences preserves the character of neighborhoods, securing "zones where family values, youth values, and the blessings of quiet seclusion and clean air make the

area a sanctuary for people.” See, *City of Edmonds v. Oxford House*, 514 U.S. 725, 733 115 S.Ct. 1776, 131 L.Ed. 2d 801 (1995); and

WHEREAS, Congress intended the FHA to “prohibit the use of zoning regulations to limit the ability of the handicapped to live in the residence of their choice in the community; however, the FHA does not preempt or abolish a municipality’s power to regulate land use and pass zoning laws.” See, *Jeffrey O. v. City of Boca Raton*, 511 F. Supp. 2d 1339 (S.D. Fla. 2007); and

WHEREAS, transient residential uses can displace permanent single family residential dwellings and thus reduce the number of permanent residents in the City and cause a reduction in state revenue sharing funds necessary to support the services that influence the quality of life for residents, commercial interests, and visitors to the City of Delray Beach; and

WHEREAS, uncontrolled and unregulated transient residential uses is found to have a negative impact on the City of Delray Beach’s economy, property values, law enforcement, traffic, safety, and the general health, safety, and welfare of the citizens of Delray Beach; and

WHEREAS, the State of Florida has recognized that leases, rentals, licenses, subleases, and assignments or otherwise allowing in any manner the use of a residential dwelling unit for under six (6) months in duration is a transient use and is therefore taxed by the State of Florida at a rate of six (6) percent of the total rental amount charged; and

WHEREAS, the Delray Beach Planning and Zoning Board has reviewed this ordinance and a duly noticed public hearing was held before the Planning and Zoning Board on December 19, 2011, and said Board has recommended adoption of the changes to the City’s Land Development Regulations regarding the regulation of transient rental units by a vote of 6 to 0 ; and

WHEREAS, the City Commission and the Planning and Zoning Board both find that the ordinance is consistent with the City’s Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That the Land Development Regulations of the City of Delray Beach, Florida, Section 4.3.3, “Specific Requirements for Specific Uses”, Subsection 4.3.3(ZZZ), “Transient Residential Uses”, shall hereby be amended to read as follows:

(ZZZ) TRANSIENT RESIDENTIAL USE ~~shall mean a~~ The entire dwelling unit or any part thereof, which is located in Single Family or Planned Residential Development Zoning Districts that and is operated or used in such a way that it has a any part of the dwelling unit turns over in occupancy of more often than ~~six (6)~~ three (3) times in any one (1) year shall be presumed to be a Transient Residential Use and therefore prohibited. ~~An entire dwelling unit or any part thereof, which is located in Medium Density Residential (RM) Zoning Districts and is operated or used in such a way that any part~~

~~of the entire dwelling unit turns over occupancy more often than six (6) times in any one (1) year shall be presumed to be a Transient Residential Use and therefore prohibited.~~

~~(1) — Transient Residential Uses are Prohibited in Single Family and Planned Residential Development Zoning Districts: All transient residential uses are prohibited in Single Family and Planned Residential Development zoning districts in order to preserve the residential character of single family neighborhoods and minimize the impact of transient uses on permanent single family land uses. Transient Residential Uses are permitted uses in Medium Density Residential (RM) Districts.~~

~~(2) (1) Exceptions/Exemptions:~~

- ~~(a) Existing transient residential uses with a turnover more often than three (3) times per year but not exceeding six (6) times per year in single-family and planned residential development zoning districts may continue until the expiration of the current lease agreement between an existing occupant and the real property owner or twelve (12) months after the effective date of this ordinance, whichever occurs first.~~
- (b) The leasing, renting, licensing, subleasing or otherwise allowing in any manner or form the use of a single-family dwelling unit for Community Residential and Group Homes which are licensed by the state are exempt.
- (c) The real property owners of the dwelling unit and their family are exempt regardless of how much time the owners and family spend at the dwelling unit on a yearly basis.

~~(3) (2) Waiver for Undue Economic Hardship: In all instances where there is a claim of undue economic hardship, the property owner may be granted a waiver from Section 4.3.3(ZZZ) after submission of waiver request to the City's Community Improvement Director or his/her designee including the following documentation:~~

- ~~(a) The amount paid for the property, the date of purchase, and the party from whom purchased;~~
- ~~(b) The assessed value of the land and improvements thereon, according to the two most recent assessments;~~
- ~~(c) Real estate taxes for the previous two years;~~
- ~~(d) Annual debt service or mortgage payments, if any, for the previous two years;~~

COMPOSITE EXHIBIT "A"

- (e) All appraisals, if any, obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property;
- (f) Any listing of the property for sale or rent, price asked, and offers received, if any;
- (g) The annual gross income from the property for the previous two years, if any;
- (h) The annual cash flow, if any, for the previous two years;
- (i) An applicant may submit and the Community Improvement Director ~~of the Neighborhood Services Department~~ or his/her designee may require that an applicant furnish additional information relevant to the determination of any alleged undue economic hardship; and
- (j) In the event that any of the required information is not reasonably available to the property owner and cannot be obtained by the property owner, the property owner shall file statement of the information which cannot be obtained and the reasons why such information cannot be reasonably obtained. Where such unobtainable information concerns required financial information, the property owner will submit a statement describing estimates which will be as accurate as are feasible.

~~(4)~~ (3) **Reasonable Accommodation:** Reasonable Accommodations from this section may be obtained pursuant to LDR Section 2.4.7(G).

~~(5)~~ (4) **Penalties for Violations:** The City adopts all enforcement methods, which include, but are not limited to, the issuance of a citation, summons, notice to appear in county court, arrest for violation of municipal ordinances, civil citations, injunction or any other enforcement method authorized by law including penalties as set forth in Section 10.99 of the City's Code of Ordinances. Any property owner that leases, rents, licenses, subleases, or otherwise allows in any manner or form the use of ~~a single-family residential an entire dwelling unit within a single-family residential development zoning district for a period of less than twelve (12) months with a turnover in occupancy of any part of the dwelling unit more often than six (6) times in any one (1) per year shall be in violation of this section as well as those entire dwelling units that are located within Medium Density Residential (RM) Zoning Districts with a turnover in occupancy of any part of the dwelling unit more often than six (6) times in any one (1) year shall be in violation of this section.~~ zoning or planned residential development zoning district for a period of less than twelve (12) months with a turnover in occupancy of any part of the dwelling unit more often than ~~six (6)~~ three (3) times in any one (1) per year ~~shall be in violation of this section as well as those entire dwelling units that are located within Medium Density Residential (RM) Zoning Districts with a turnover in occupancy of any part of the dwelling unit more often than six (6) times in any one (1) year shall be in violation of this section.~~

~~(6)~~ (5) **Severability:**

- (a) **Generally.** If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of Section 4.3.3(ZZZ) is declared unconstitutional

by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect the remainder of Section 4.3.3(ZZZ), "Transient Residential Uses".

(b) If the entire Section 4.3.3(ZZZ) is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the earlier version of this section adopted by the City Commission on July 7, 2009 as Ordinance 29-09 shall be substituted herein and shall be deemed to be in full force and effect.

Section 2. That Appendix "A", "Definitions", of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

TRANSIENT RESIDENTIAL USE shall mean ~~a the entire dwelling unit or any part thereof, that is~~ which is located in Single Family or Planned Residential Development Zoning Districts and is operated or used in such a way that any part of the dwelling unit turns over ~~turnover in~~ occupancy ~~of more often~~ than ~~six (6)~~ ~~three (3)~~ times in any one (1) year and the entire dwelling unit or any part thereof, which is located in Medium Density Residential (RM) Zoning Districts and is operated or used in such a way that any part thereof turns over occupancy more often than six (6) times in any one (1) year.

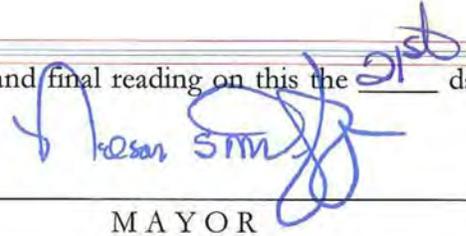
Section 3. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 4. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 5. That this ordinance shall become effective immediately upon its passage on second and final reading.

COMPOSITE EXHIBIT "A"

PASSED AND ADOPTED in regular session on second and final reading on this the 21st day of February, 2012.


MAYOR

ATTEST


City Clerk

First Reading 2/7/2012

Second Reading 2/21/2012

COMPOSITE EXHIBIT "A"

Ordinance No. 40-12

Amendments to the transient residential use ("TRU") definition included in Section 4.3.3 (ZZZ) and Appendix "A" Definitions:

- The change to the definition added the Rural Residential ("RR") district to the districts where TRU was defined as turning over occupancy more than 3 times a year and was prohibited and the Low Density Residential district was added to the RM district where occupancy more than 6 times a year was prohibited.

This amendment regulates the frequency of TRU in two zoning districts which were not regulated in the pre-2011 Code.

Amendments to Exceptions/Exemptions included in Section 4.3.3 (ZZZ):

- This change added a previously unregulated zoning district to the exceptions.

Although this purports to provide time for compliance in the RR zoning district, this regulates frequency after the 12-month exception period in the RR zoning district.

Amendments to the Waiver for Undue Economic Hardship procedures included in Section 4.3.3 (ZZZ):

- Made a format change to clarify subsection (a)1-10 is the documentation required to be included in a waiver request;
- Added subsection (b) notice of proposed decision guidelines; and
- Added subsection (c) appeal procedures.

These amendments do not add any regulations on the duration or frequency of vacation rentals.

Amendments to Penalties for violations included in Section 4.3.3 (ZZZ):

- Added the previously unregulated zoning districts, rural residential and low density residential, to the penalty provision.

These amendments regulate duration and frequency by adding penalties to zoning districts/uses which were not included in the pre-2011 Code.

Amendments to Principal Uses and Structures Permitted included in Section 4.4.6(B):

- Removed TRU from the list of permitted uses.

The effect of removing the permitted use is prohibiting a use which regulates the duration and frequency of vacation rentals which was permitted before June 2011.

COMPOSITE EXHIBIT "A"

Text with (red) ~~strikethrough~~ represents preempted provisions that were included in Ord 40-12.
Text with (blue) ~~strikethrough~~ represents preempted provisions from 03-12.
Highlighted text represents the provisions which remain in the ordinance.
All other amendments remain.

ORDINANCE NO. 40-12

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING SECTION 4.3.3, "SPECIFIC REQUIREMENTS FOR SPECIFIC USES", BY AMENDING SUBSECTION 4.3.3(ZZZ), "TRANSIENT RESIDENTIAL USE", IN ORDER TO CLARIFY PROHIBITIONS, EXEMPTIONS/ EXCEPTIONS, WAIVERS, AND PENALTIES FOR SAME; AMENDING APPENDIX "A", "DEFINITIONS", IN ORDER TO AMEND THE DEFINITION OF "TRANSIENT RESIDENTIAL USE"; AMENDING SUBSECTION 4.4.6(B), "PRINCIPAL USES AND STRUCTURES PERMITTED", TO REMOVE TRANSIENT RESIDENTIAL USE AS A PRINCIPAL USE; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission hereby finds and declares that the leasing, renting, licensing, subleasing or otherwise allowing in any manner or form the use of single-family residential dwelling units for periods of less than twelve (12) months with a turnover in occupancy more often than three (3) times per year to any person, entity or family, is a non-residential activity and is not considered an accessory use customarily accessory and incidental and subordinate to the primary intended purpose of dwellings, *See, Schwarz v. City of Treasure Island*, 21 Fla.L.Weekly Fed. C11541 (11th Cir. 2008); and

WHEREAS, the Census Data collected by the U.S. Census Bureau in 2010 provides that the average family size is 2.24 people in the City of Delray Beach; and

WHEREAS, transient residential uses often maximize occupancy causing increased pressure on infrastructure, including: garbage, sewer, water, roadways, and utilities; code enforcement, law enforcement, fire protection and inspection services; and

WHEREAS, transient residential uses can result in increased noise and traffic in single-family residential communities; and

WHEREAS, unless regulations are placed on the amount and location of transient uses, such uses could overwhelm the non-transient related single-family residential community making the City of Delray Beach a less attractive place to reside; and

WHEREAS, transient residential uses can be incompatible with permanent and seasonal residential uses if not properly planned, controlled and regulated; and

WHEREAS, the rapid turnover in occupancy associated with transient residential uses can be a disruptive influence on the peaceful use and enjoyment of single family residential areas; and

WHEREAS, reserving land for single family residences preserves the character of neighborhoods, securing "zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people." See, *City of Edmonds v. Oxford House*, 514 U.S. 725, 733 115 S.Ct. 1776, 131 L.Ed. 2d 801 (1995); and

WHEREAS, Congress intended the FHA to "prohibit the use of zoning regulations to limit the ability of the handicapped to live in the residence of their choice in the community; however, the FHA does not pre-empt or abolish a municipality's power to regulate land use and pass zoning laws." See, *Jeffrey O. v. City of Boca Raton*, 511 F. Supp. 2d 1339 (S.D. Fla. 2007); and

WHEREAS, transient residential uses can displace permanent single family residential dwellings and thus reduce the number of permanent residents in the City and cause a reduction in state revenue sharing funds necessary to support the services that influence the quality of life for residents, commercial interests, and visitors to the City of Delray Beach; and

WHEREAS, uncontrolled and unregulated transient residential uses is found to have a negative impact on the City of Delray Beach's economy, property values, law enforcement, traffic, safety, and the general health, safety, and welfare of the citizens of Delray Beach; and

WHEREAS, the State of Florida has recognized that leases, rentals, licenses, subleases, and assignments or otherwise allowing in any manner the use of a residential dwelling unit for under six (6) months in duration is a transient use and is therefore taxed by the State of Florida at a rate of six (6) percent of the total rental amount charged; and

WHEREAS, the Delray Beach Planning and Zoning Board has reviewed this ordinance and a duly noticed public hearing was held before the Planning and Zoning Board on September 24, 2012, and said Board has recommended adoption of the changes to the City's Land Development Regulations regarding the regulation of transient rental units by a vote of 7 to 0 ; and

WHEREAS, the City Commission and the Planning and Zoning Board both find that the ordinance is consistent with the City's Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That the Land Development Regulations of the City of Delray Beach, Florida, Section 4.3.3, "Specific Requirements for Specific Uses", Subsection 4.3.3(ZZZ), "Transient Residential Uses", shall hereby be amended to read as follows:

(ZZZ) TRANSIENT RESIDENTIAL USE The entire dwelling unit or any part thereof, which is located in Single Family, ~~Rural Residential~~, or Planned Residential Development Zoning Districts and is operated or used in such a way that any part of the dwelling unit turns over occupancy more often than three (3) times in any one (1) year shall be presumed to be a Transient Residential Use and therefore prohibited. ~~An entire dwelling unit or any part thereof, which is located in Low Density Residential (RL) or Medium Density Residential (RM) Zoning Districts and is operated or used in such a way that any part of the entire dwelling unit turns over occupancy more often than six (6) times in any one (1) year shall be presumed to be a Transient Residential Use and therefore prohibited.~~

(1) **Exceptions/Exemptions:**

- (a) Existing transient residential uses ~~with a turnover more often than three (3) times per year but not exceeding six (6) times per year in single-family, rural residential~~, and planned residential development zoning districts may continue until twelve (12) months after the effective date of this ordinance 03-12.
- (b) The leasing, renting, licensing, subleasing or otherwise allowing in any manner or form the use of a single-family dwelling unit for Community Residential and Group Homes which are licensed by the state are exempt.
- (c) The real property owners of the dwelling unit and their family are exempt regardless of how much time the owners and family spend at the dwelling unit on a yearly basis.

(2) **Waiver for Undue Economic Hardship:** In all instances where there is a claim of undue economic hardship, the property owner may be granted a waiver from Section 4.3.3(ZZZ) after submission of waiver request to the City's Community Improvement Director or his/her designee ~~including the following documentation:~~

(a) All waivers requests shall include the following documentation:

- ~~(a)~~ 1. The amount paid for the property, the date of purchase, and the party from whom purchased;
- ~~(b)~~ 2. The assessed value of the land and improvements thereon, according to the two most recent assessments;
- ~~(c)~~ 3. Real estate taxes for the previous two years;

- ~~(d)~~ 4. Annual debt service or mortgage payments, if any, for the previous two years;
- ~~(e)~~ 5. All appraisals, if any, obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property;
- ~~(f)~~ 6. Any listing of the property for sale or rent, price asked, and offers received, if any;
- ~~(g)~~ 7. The annual gross income from the property for the previous two years, if any;
- ~~(h)~~ 8. The annual cash flow, if any, for the previous two years;
- ~~(i)~~ 9. An applicant may submit and the Community Improvement Director or his/her designee may require that an applicant furnish additional information relevant to the determination of any alleged undue economic hardship; and
- ~~(j)~~ 10. In the event that any of the required information is not reasonably available to the property owner and cannot be obtained by the property owner, the property owner shall file statement of the information which cannot be obtained and the reasons why such information cannot be reasonably obtained. Where such unobtainable information concerns required financial information, the property owner will submit a statement describing estimates which will be as accurate as are feasible.

~~(b) **Notice of Proposed Decision.** The City's Community Improvement Director, or his/her designee, shall have the authority to consider and act on waivers for undue economic hardship under this section. When a waiver has been requested, the City's Community Improvement Director, or his/her designee, shall issue a written determination within forty-five (45) days of the date of receipt of all required documentation and may, (1) grant the waiver request, (2) grant a portion of the request and deny a portion of the request, and/or impose conditions upon the grant of the request, or (3) deny the request. Any such denial shall be in writing and shall state the grounds therefore. All written determinations shall give notice of the right to appeal. The notice of determination shall be sent to the~~

requesting party by certified mail, return receipt requested. If reasonably necessary to reach a determination on the request for reasonable accommodation, the City's Community Improvement Director, or his/her designee, may, prior to the end of said forty-five (45) day period, request additional information from the requesting party, specifying in sufficient detail what information is required. The requesting party shall have fifteen (15) days after the date of the request for additional information to provide the requested information. In the event a request for additional information is made, the forty-five (45) day period to issue a written determination shall no longer be applicable, and the City's Community Improvement Director, or his/her designee, shall issue a written determination within thirty (30) days after receipt of the additional information. If the requesting party fails to provide the requested additional information within said fifteen (15) day period, the City's Community Improvement Director, or his/her designee, shall issue a written notice advising that the requesting party had failed to timely submit the additional information and therefore the request for waiver shall be deemed abandoned and/or withdrawn and no further action by the City with regard to said wavier request shall be required.

(c) Appeal. Within thirty (30) days after the Community Improvement Director's, or his/her designee's, determination on a waiver request is mailed to the requesting party, such applicant may appeal the decision. All appeals shall contain a statement containing sufficient detail of the grounds for the appeal. Appeals shall be to the City Commission who shall, after public notice and a public hearing, render a determination as soon as reasonably practicable, but in no event later than sixty (60) days after an appeal has been filed.

(3) **Reasonable Accommodation:** Reasonable Accommodations from this section may be obtained pursuant to LDR Section 2.4.7(G).

(4) **Penalties for Violations:** The City adopts all enforcement methods, which include, but are not limited to, the issuance of a citation, summons, notice to appear in county court, arrest for violation of municipal ordinances, civil citations, injunction or any other enforcement method authorized by law including penalties as set forth in Section 10.99 of the City's Code of Ordinances. Any property owner that leases, rents, licenses, subleases, or otherwise allows in any manner or form the use of an entire dwelling unit within a single-family, ~~rural residential, or planned residential development zoning~~ district for a period of less than twelve (12) months with a turnover in occupancy of any part of the dwelling unit more often than ~~three (3)~~ **six (6)** times in any one (1) year ~~as well as those entire dwelling units that are~~

~~located within Low Density Residential (RL) or Medium Density Residential (RM) Zoning Districts with a turnover in occupancy of any part of the dwelling unit more often than six (6) times in any one (1) year shall be in violation of this section.~~

(5) **Severability:**

- (a) **Generally.** If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of Section 4.3.3(ZZZ) is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect the remainder of Section 4.3.3(ZZZ), "Transient Residential Uses".
- (b) If the entire Section 4.3.3(ZZZ) is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the earlier version of this section adopted by the City Commission on July 7, 2009 as Ordinance 29-09 shall be substituted herein and shall be deemed to be in full force and effect.

Section 2. That Appendix "A", "Definitions", of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

TRANSIENT RESIDENTIAL USE shall mean the entire dwelling unit or any part thereof, which is located in Single Family, ~~Rural Residential~~, or Planned Residential Development Zoning Districts and is operated or used in such a way that any part of the dwelling unit turns over occupancy more often than ~~three (3)~~ six (6) times in any one (1) year and the entire dwelling unit or any part thereof, which is located in ~~Low Density Residential (RL) or~~ Medium Density Residential (RM) Zoning Districts and is operated or used in such a way

that any part thereof turns over occupancy more often than six (6) times in any one (1) year.

Section 3. That Section 4.4.6, "Medium Density Residential (RM) District", Subsection (B), "Principal Use and Structures Permitted", of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

(B) **Principal Uses and Structures Permitted:** The following types of use are allowed within the (RM) District as a permitted use:

- (1) Single family detached dwellings.
- (2) Duplex structures.
- (3) Multiple family structures.
- (4) An abused spouse residence with twelve (12) or fewer residents.

(5) Group Homes, Types 1 and 2, and Community Residential Homes, pursuant to restrictions set forth in Section 4.3.3(I).

(6) Parking lots not associated with a use, pursuant to an adopted neighborhood or redevelopment plan.

(7) Pocket parks.

(8) Public educational facilities of The School District of Palm Beach County, pursuant to the regulations set forth in Section 4.3.3 (HH).

(9) Assisted Living Facilities and Continuing Care Facilities.

~~(10)~~ **Transient Residential Use**

~~(11)~~ ~~(10)~~ Residential Licensed Service Provider Facilities.

~~(12)~~ ~~(11)~~ Nursing Homes within multi-family structures only.

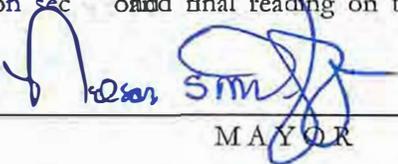
~~(13)~~ ~~(12)~~ Community Gardens pursuant to regulations set forth in Section 4.3.3(D).

Section 4. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 5. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 6. That this ordinance shall become effective immediately upon its passage on second and final reading.

le *st* PASSED AND ADOPTED in regular session on ~~sec~~ second final reading on this the day of November, 2012.


MAYOR

ATTEST

City Clerk

First Reading 10/16/2012

Second Reading 11/6/2012

COMPOSITE EXHIBIT "A"

Ordinance No. 08-12

Amending Chapter 117 Landlord Permits

The amendments in this ordinance do not regulate the frequency or duration of vacation rentals and accordingly are not subject to the preemption provided for in Sec. 509-032(7)(b), Fla. Stat.

Ordinance No. 31-12

Amendment to Chapter 117 to remove the requirement to include rental amount from the application does not regulate the frequency or duration of vacation rentals.

3. SYNOPSIS OF THE ENFORCEABLE PROVISIONS IN ACCORDANCE WITH EXISTING CODE SECTIONS

DELRAY BEACH LAND DEVELOPMENT REGULATIONS

Section 4.3.3 *Special Requirements for Specific Uses*

* * *

(ZZZ) Transient Residential Use

Transient Residential Use (TRU) shall mean a dwelling or any part thereof which is operated or used in such a way that any part of the dwelling unit turns over in occupancy more than six (6) times in one (1) year. TRU is prohibited in Single Family (SF) and Planned Residential Development (PRD) districts and permitted in the Medium Density Residential (RM) district.

(1) Exceptions/exemptions

- (a) Existing TRU in SF and PRD until lease expiration or July 7, 2010.
- (b) Leasing, renting, licensing, subleasing a community Residence is exempt.
- (c) Real property owners and their family are exempt.

(2) Waiver for undue economic hardship – refer to current code for enforcement

(3) Reasonable accommodations – refer to current code for enforcement

(4) Penalties for Violations –

Penalties provided for are enforceable against the use of a single-family residential dwelling (or part thereof) that leases, rents, licenses, subleases, or otherwise allows turnover in occupancy of more than 6 times a year in the SF district.

* * *

Section 4.4.6 *Medium Density Residential Districts*

* * *

(B) Principal Uses and Structures Permitted

Add Transient Residential Use as a permitted use - defined as a dwelling unit or part thereof, that is used in such a way that it has turnover in occupancy or more than six (6) times in any one (1) year.

Appendix "A" Definitions

* * *

Transient Residential Use Transient Residential Use (TRU) shall mean a dwelling or any part thereof which is operated or used in such a way that any part of the dwelling unit turns over in occupancy more than six (6) times in one (1) year. TRU is prohibited in Single Family (SF) and Planned Residential Development (PRD) districts and permitted in the Medium Density Residential (RM) district. A community residence is not a TRU.

ORDINANCE NO. 29-09

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING SECTION 4.3.3, "SPECIFIC REQUIREMENTS FOR SPECIFIC USES", BY ENACTING A NEW SUBSECTION 4.3.3(ZZZ), "TRANSIENT RESIDENTIAL USES", IN ORDER TO ESTABLISH PROHIBITIONS, EXEMPTIONS/ EXCEPTIONS, WAIVERS, AND PENALTIES FOR SAME; AMENDING SECTION 4.4.6, "MEDIUM DENSITY RESIDENTIAL (RM) DISTRICT", SUBSECTION (B), "PRINCIPAL USES AND STRUCTURES PERMITTED", IN ORDER TO PROVIDE THAT TRANSIENT RESIDENTIAL USES SHALL BE ALLOWED AS PERMITTED USES WITHIN THE (RM) DISTRICT; AMENDING APPENDIX "A", "DEFINITIONS", IN ORDER TO PROVIDE A DEFINITION OF "TRANSIENT RESIDENTIAL USES"; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission hereby finds and declares that the leasing, renting, licensing, subleasing or otherwise allowing in any manner or form the use of single-family residential dwelling units for periods of less than twelve (12) months with a turnover in occupancy more often than six (6) times per year to any person, entity or family, is a non-residential activity and is not considered an accessory use customarily accessory and incidental and subordinate to the primary intended purpose of dwellings, *See, Schwarz v. City of Treasure Island*, 21 Fla.L.Weekly Fed. C11541 (11th Cir. 2008); and

WHEREAS, the Census Data collected by the U.S. Census Bureau in 2000 provides that the average family size is 2.87 people; and

WHEREAS, transient residential uses often maximize occupancy causing increased pressure on infrastructure, including: garbage, sewer, water, and roadways; and

WHEREAS, transient residential uses can result in increased noise and traffic in single-family residential communities; and

WHEREAS, unless regulations are placed on the amount and location of transient uses, such uses could overwhelm the non-transient related single-family residential community making the City of Delray Beach a less attractive place to reside; and

WHEREAS, transient residential uses can be incompatible with permanent and seasonal residential uses if not properly planned, controlled and regulated; and

WHEREAS, the rapid turnover in occupancy associated with transient residential uses can be a disruptive influence on the peaceful use and enjoyment of single family residential areas; and

WHEREAS, reserving land for single family residences preserves the character of neighborhoods, securing "zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people." See, *City of Edmonds v. Oxford House*, 514 U.S. 725, 733 115 S.Ct. 1776, 131 L.Ed. 2d 801 (1995); and

WHEREAS, Congress intended the FHA to "prohibit the use of zoning regulations to limit the ability of the handicapped to live in the residence of their choice in the community; however, the FHA does not preempt or abolish a municipality's power to regulate land use and pass zoning laws." See, *Jeffrey O. v. City of Boca Raton*, 511 F. Supp. 2d 1339 (S.D. Fla. 2007); and

WHEREAS, transient residential uses can displace permanent single family residential dwellings and thus reduce the number of permanent residents in the City and cause a reduction in state revenue sharing funds necessary to support the services that influence the quality of life for residents, commercial interests, and visitors to the City of Delray Beach; and

WHEREAS, uncontrolled and unregulated transient residential uses is found to have a negative impact on the City of Delray Beach's economy, property values, law enforcement, traffic, safety, and the general health, safety, and welfare of the citizens of Delray Beach; and

WHEREAS, the State of Florida has recognized that leases, rentals, licenses, and subleases or otherwise allowing in any manner the use of a residential dwelling unit for under twelve (12) months in duration is a transient use and is therefore taxed by the State of Florida at a rate of six (6) percent of the total rental amount charged; and

WHEREAS, the State of Florida regulates Group Homes and Community Residential Homes by §419.001, *Fla. Stat.*, which provides distance requirements of 1,000 feet between any home with six (6) or fewer residents and zoning approval by local government of all homes with seven (7) to fourteen (14) residents, which results in less of an impact upon single-family zoning districts due to the distance requirements; and

WHEREAS, Group Homes and Community Residential Homes statistically have residents that have a turnover in occupancy of less than six (6) times per year; and

WHEREAS, Assisted Living Facilities, which are licensed under Chapter 429, *Fla. Stat.* statistically have residents that have a turnover in occupancy of less than six (6) times per year; and

WHEREAS, the Delray Beach Planning and Zoning Board has reviewed this ordinance and a duly noticed public hearing was held before the Planning and Zoning Board on May 18, 2009, and said Board has recommended denial of the changes to the City's Land Development Regulations regarding the regulation of transient rental units by a vote of 5 to 0; and

WHEREAS, the City Commission finds that the ordinance is consistent with the City's Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That the Land Development Regulations of the City of Delray Beach, Florida, Section 4.3.3, "Specific Requirements for Specific Uses", Subsection 4.3.3(ZZZ), "Transient Residential Uses", shall hereby be enacted to read as follows:

(ZZZ) TRANSIENT RESIDENTIAL USE shall mean a dwelling that is operated or used in such a way that it has a turnover in occupancy of more than six (6) times in any one (1) year.

(1) Transient Residential Uses are Prohibited in Single Family and Planned Residential Development Zoning Districts: All transient residential uses are prohibited in Single-Family and Planned Residential Development zoning districts in order to preserve the residential character of single-family neighborhoods and minimize the impact of transient uses on permanent single-family land uses. Transient Residential Uses are permitted uses in Medium Density Residential (RM) Districts.

(2) Exceptions/Exemptions:

(a) Existing transient residential uses in single-family and planned residential development zoning districts may continue until the expiration of the current lease agreement between an existing occupant and the real property owner or twelve (12) months after the effective date of this ordinance, whichever occurs first.

(b) The leasing, renting, licensing, subleasing or otherwise allowing in any manner or form the use of a single-family dwelling unit for Community Residential Homes, Group Homes, and/or Assisted Living Facilities, which are licensed by the state are exempt.

(c) The real property owners of the dwelling unit are exempt regardless of how much time the owners spend at the dwelling unit on a yearly basis.

(3) Waiver for Undue Economic Hardship: In all instances where there is a claim of undue economic hardship, the property owner may be granted a waiver from Section 4.3.3(ZZZ) after submission of waiver request to the City's Community Improvement Director or his/her designee including the following documentation:

(a) The amount paid for the property, the date of purchase, and the party from whom purchased;

- (b) The assessed value of the land and improvements thereon, according to the two most recent assessments;
 - (c) Real estate taxes for the previous two years;
 - (d) Annual debt service or mortgage payments, if any, for the previous two years;
 - (e) All appraisals, if any, obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property;
 - (f) Any listing of the property for sale or rent, price asked, and offers received, if any;
 - (g) The annual gross income from the property for the previous two years, if any;
 - (h) The annual cash flow, if any, for the previous two years;
 - (i) An applicant may submit and the Director of the Neighborhood Services Department or his/her designee may require that an applicant furnish additional information relevant to the determination of any alleged undue economic hardship; and
 - (j) In the event that any of the required information is not reasonably available to the property owner and cannot be obtained by the property owner, the property owner shall file statement of the information which cannot be obtained and the reasons why such information cannot be reasonably obtained. Where such unobtainable information concerns required financial information, the property owner will submit a statement describing estimates which will be as accurate as are feasible.
- (4) Reasonable Accommodation: Reasonable Accommodations from this section may be obtained pursuant to LDR Section 2.4.7(G).
- (5) Penalties for Violations: The City adopts all enforcement methods, which include, but are not limited to, the issuance of a citation, summons, notice to appear in county court, arrest for violation of municipal ordinances, civil citations, injunction or any other enforcement method authorized by law including penalties as set forth in Section 10.99 of the City's Code of Ordinances. Any property owner that leases, rents, licenses, subleases, or otherwise allows in any manner or form the use of a single-family residential dwelling unit within a single-family zoning district for a period of less than twelve (12) months with a turnover in occupancy of more than six (6) times per year shall be in violation of this section.

(6) Severability:

(a) Generally. If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of Section 4.3.3(ZZZ) is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect the remainder of Section 4.3.3(ZZZ), "Transient Residential Uses".

Section 2. That Section 4.4.6, "Medium Density Residential (RM) Districts", Subsection (B), "Principal Uses and Structures permitted", of the Land Development Regulations of the City of Delray Beach, Florida, shall be hereby amended to read as follows:

(B) **Principal Uses and Structures Permitted:** The following types of use are allowed within the (RM) District as permitted use:

- (1) Single family detached dwellings.
- (2) Duplex structures.
- (3) Multiple family structures.
- (4) An abused spouse residence with twelve (12) or fewer residents.
- (5) Group Homes, Types 1 and 2, and Community Residential Homes, pursuant to restrictions set forth in Section 4.3.3(I).
- (6) Parking lots not associated with a use, pursuant to an adopted neighborhood or redevelopment plan.
- (7) Pocket parks.
- (8) Public educational facilities of The School District of Palm Beach County, pursuant to the regulations set forth in Section 4.3.3(HH).
- (9) Assisted Living Facilities and Continuing Care Facilities.
- (10) Transient Residential Use.

Section 3. That Appendix "A", "Definitions", of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

TRANSIENT RESIDENTIAL USE shall mean a dwelling that is operated or used in such a way that

it has a turnover in occupancy of more than six (6) times in any one (1) year.

Section 4. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 5. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 6. That this ordinance shall become effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the 7th day of July, 2009.

[Signature]
MAYOR

ATTEST

[Signature]
City Clerk

First Reading 6/2/09

Second Reading 7/7/09