

ORDINANCE NO. 21-26

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH CODE OF ORDINANCES, CHAPTER 4, "ZONING REGULATIONS," ARTICLE 4.3, "DISTRICT REGULATIONS, GENERAL PROVISIONS," SECTION 4.3.3, "SPECIFIC REQUIREMENTS FOR SPECIFIC USES," SUBSECTION (ZZZ), "TRANSIENT RESIDENTIAL USES," TO ELIMINATE PROVISIONS PREEMPTED BY THE STATE OF FLORIDA; AMENDING ARTICLE 4.4, "BASE ZONING DISTRICT," SECTION 4.4.6, "MEDIUM DENSITY RESIDENTIAL (RM) DISTRICT," SUBSECTION (B), "PRINCIPAL USES AND STRUCTURES PERMITTED," TO ALLOW TRANSIENT RESIDENTIAL USE SUBJECT TO THE PROVISIONS OF SECTION 4.3.3(ZZZ); AND AMENDING APPENDIX A, "DEFINITIONS," TO AMEND THE DEFINITION FOR "TRANSIENT RESIDENTIAL USES" TO ELIMINATE INCONSISTENCIES WITH STATE STATUTES; PROVIDING A CONFLICTS CLAUSE; A SEVERABILITY CLAUSE; AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

WHEREAS, the City Commission adopted Transient Residential Use regulations by Ordinance No. 29-09 on July 7, 2009, to address concerns regarding potential community impacts by finding that turnover in occupancy more than six times per year to any person, entity, or family, is a non-residential activity and is not considered a use customarily accessory, incidental, and subordinate to the primary intended purpose of dwellings (See *Schwartz v. City of Treasure Island*, 21 Fla. L. Weekly Fed. C11541 (11th Cir. 2008)); and

WHEREAS, on June 2, 2011, House Bill 356, Public Lodging/Public Food Service Establishments, became effective, and pursuant to Florida Statute 509.032(7)(b), "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"; and

WHEREAS, pursuant to Florida Statute 509.242(1)(c), a vacation rental is defined as "any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project"; and

WHEREAS, the City Commission adopted amendments to the Transient Residential Use regulations adopted by Ordinance No. 29-09 via Ordinance No. 03-12 on February 21, 2012, and Ordinance No. 40-12 on November 6, 2012, to provide further restrictions and regulations applicable to Transient Residential Uses; and

WHEREAS, due to their adoption date after June 1, 2011, portions of Ordinance Nos. 03-12 and 40-12 conflict with Florida Statute 509.032(7)(b) by further regulating the frequency and duration of vacation rental turnover; and

WHEREAS, the Transient Residential Uses regulations adopted by Ordinance No. 29-09 that are not preempted by the State can be readopted by the City Commission and recodified in this Ordinance; and

WHEREAS, pursuant to Florida Statutes 163.3174(4), the Planning and Zoning Board for the City of Delray Beach, sitting as Local Planning Agency, considered this Ordinance at a public hearing on February 23, 2026, and voted 7 to 0 to recommend that the proposed text amendments be approved, finding that the request and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in the Land Development Regulations; and

WHEREAS, the City Commission has considered Ordinance No. 21-26 and the respective findings as set forth in the Comprehensive Plan and Land Development Regulations

IT IS HEREBY ORDAINED BY THE CITY COMMISSION OF THE CITY DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The recitations set forth above are incorporated herein.

Section 2. The City Commission of the City of Delray Beach finds this Ordinance is consistent with the Comprehensive Plan, meets the criteria set forth in the Land Development Regulations, and is in the best interests of the City.

Section 3. Chapter 4, “Zoning Regulations,” Article 4.3, “District Regulations, General Provisions,” Section 4.3.3, “Specific Requirements for Specific Uses,” Subsection 4.3.3 (ZZZ), “Transient Residential Uses,” of the Land Development Regulations of the City of Delray Beach, Florida is amended as follows:

(ZZZ) **Transient residential use:** The entire dwelling unit or any part thereof, ~~which is located in a 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~~ six times in any one 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 times in any one 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 times per year but not exceeding six times per year~~ in single-family, ~~rural~~ residential, and planned residential development zoning districts may continue until 12 months after the effective date of ~~e~~Ordinance No. 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 a Community Residence is 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 a waiver request to the City's Community Improvement Director or his/her designee Development Services Department.
- (a) All waivers requests shall include the following documentation:
1. The amount paid for the property, the date of purchase, and the party from whom it was purchased;
 2. The assessed value of the land and improvements thereon, according to the two most recent assessments;
 3. Real estate taxes for the previous two years;
 4. Annual debt service or mortgage payments, if any, for the previous two years;
 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;
 6. Any listing of the property for sale or rent, price asked, and offers received, if any;
 7. The annual gross income from the property for the previous two years, if any;
 8. The annual cash flow, if any, for the previous two years;
 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
 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 a statement of the information which that 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.
1. When a waiver has been requested, the ~~City's Community Improvement~~ Director, or his/her designee, shall issue a written determination within 45 days of the date of receipt of all required documentation and may:
 - ~~(1)~~a. grant the waiver request,
 - ~~(2)~~b. 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)~~c. 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.~~
 2. 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 45-day period, request additional information from the requesting party, specifying in sufficient detail what information is required.
 3. The requesting party shall have 15 days after the date of the request for additional information to provide the requested information.
 4. In the event a request for additional information is made, the 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 30 days after receipt of the additional information.
 5. If the requesting party fails to provide the requested additional information within ~~said 15-day period~~ 15 days, 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~~ thereby deeming the request abandoned and/or withdrawn and that no further action by the City would take place with regard to said waiver request shall be required.
 6. All denied requests, denied portions of requests, or imposed conditions on a request may be appealed pursuant to Article 2.5, Appeals.

- (c) ***Appeal.*** ~~Within 30 days after the City's 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 60 days after an appeal has been filed. Appeals are processed in accordance with Article 2.5, Appeals, and shall be heard by the City Commission at a public hearing. Notice of the public hearing shall be provided in accordance with Section 2.4.6(A) and (B).~~
- (3) ***Reasonable accommodation.*** Reasonable Accommodations from this section may be obtained pursuant to LDR Section 2.4.711(~~GE~~).
- (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 12 months with a turnover in occupancy of any part of the dwelling unit more often than ~~three~~ six times in any one 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 times in any one 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 4. Chapter 4, "Zoning Regulations," Article 4.4, "Base Zoning District," 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 is amended 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 12 or fewer residents.
- (5) Community Residence housing four to ten individuals, except as required by state law, that (1) is at least 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, and (2) the operator or applicant is licensed or certified by the State of Florida to operate the proposed community residence, has certification from an appropriate national accrediting agency, or has been recognized or sanctioned by Congress to operate the proposed community residence.
- (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 that do not comport with the definition of "community residence" and Continuing Care Facilities.
- (10) Nursing Homes within multi-family structures only.
- (11) Transient Residential Use, subject to Section 4.3.3(ZZZ)

Section 3. Appendix A, "Definitions", of the Land Development Regulations of the City of Delray Beach, Florida is amended as follows:

TRANSIENT RESIDENTIAL USE. Shall mean the entire dwelling unit or any part thereof, ~~which that is located in a 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-six times in any one year and the entire dwelling unit or any part thereof, which that is located in a 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 times in any one year. A Community Residence is not a Transient Residential Use.~~

Section 4. All ordinances or parts thereof in conflict or inconsistent with the provisions of this Ordinance are hereby repealed.

Section 5. 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 6. Specific authority and direction are hereby given to the City Clerk to codify this Ordinance.

Section 7. 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 ____ day of _____, 2026.

ATTEST:

Alexis Givings, City Clerk

Thomas F. Carney, Jr., Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

First Reading _____

Second Reading _____