

EXECUTIVE BRIEF WORK SESSION

AGENDA DATE: May 21, 2020

DEPARTMENT: City Attorney

TITLE:

Work Session Discussion - Vacation Rentals

SUMMARY:

The City's Code of Ordinances currently (and since before June 1, 2011) does not permit vacation rentals. If the City desires to permit vacation rentals, the City's ability to regulate vacation rentals will be limited by the existing statutory preemption over vacation rentals.

BACKGROUND AND JUSTIFICATION:

Before June 1, 2011, local governments enacted local laws which restricted or prohibited the short-term rental of residential properties. In 2011, the Florida Legislature adopted a bill which defined "vacation rentals" and preempted any local law attempting to restrict the use of vacation rentals, prohibit vacation rentals or regulate vacation rentals based solely on the classification, use or occupancy. See section 509.032(7)(b), Florida Statutes (2012). This preemption did not apply to any local law adopted on or before June 1, 2011.

In 2013, the City held a workshop to discuss the City's local laws on "vacation rentals" and its options. City staff presented information at that time as to the City's pre-June 1, 2011 local law. Specifically, under the City's Code of Ordinances, short-term, transient facilities were not permitted (i.e., rentals of less than 60 days). City staff also advised the City Commission that the City's options were to either keep its pre-June 1, 2011 local laws in place or remove the local laws completely. Alternatively, it was suggested that the City could seek declaratory relief as to the enforceability of the City's pre-June 1, 2011 local laws. The City Commission decided to postpone a decision on the matter, in part, to ask the State Legislators to amend the current law to allow for greater regulation.

In 2014, the Florida Legislature amended the law to keep intact the preemption over any local law prohibiting vacation rentals and regulations regarding the rental duration or frequency of vacation rentals. The 2014 amendment also allowed for the continuation of any pre-June 1, 2011 prohibition by local laws. See section 509.032(7)(b), Florida Statutes (2015). This 2014 amendment created some wiggle room for local governments to enact limited local laws regulating vacations rentals (e.g., business license type-requirements and life safety inspections).

The City of Lake Worth Beach continues to maintain that vacation rentals are prohibited due to their non-permitted status since before June 1, 2011. If vacation rentals were permitted, the City would utilize its Business License regulations which generally focus on life safety issues of businesses open to the public.

Currently, the City's Code Compliance Division enforces the City's pre-June 1, 2011 prohibition of vacation rentals. The City's Special Magistrate has upheld the City's position and required the closure of vacation rentals. Please note, however, Code Compliance does not actively search for violating vacation rentals; instead, the enforcement is responsive to citizens' complaints.

The Florida Attorney General in a recent opinion looked at a municipality's ability to relax its pre-June 1, 2011 permitted use table to allow for vacation rentals in additional areas without losing its pre-June 1, 2011 grandfathered status. In that opinion (Florida Attorney General Opinion No. 2019-07, dated August 16, 2019), the Attorney General concluded such relaxation of the local law would violate the State's preemption in section 509.032(7)(b), Florida Statutes.

Based on the statute, case law and Florida Attorney General Opinions on this matter, it appears the City has primarily two options:

- (1) Continue with the pre-June 1, 2011 prohibition of vacation rentals and maintain current enforcement status; or,
- (2) Remove that prohibition and allow for vacation rentals subject only to the City's Business License requirements.

If option (1) above is selected, as noted in 2013 workshop, the City could seek declaratory relief on the issue or the City's prohibition could be challenged. In either process, if the City's prohibition is overturned by a court, the City would be forced into option (2) above.

MOTION: N/A

ATTACHMENT(S): N/A