



CITY OF FORT PIERCE

PLANNING DEPARTMENT

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HISTORIC PRESERVATION ♦ URBAN DESIGN ♦ URBAN FORESTRY ♦ ZONING

TO: Robert J. Bradshaw, City Manager

THROUGH: Rebecca Grohall, AICP, Planning Manager

FROM: Kori Benton, Senior Planner

SUBJECT: Dwelling Rentals – Vacation Rentals
Interpretation and Implementation
Section 22-3. Definitions & Section 22-22. Allowed uses.

DATE: June 16, 2015

The City Commission engaged in brief discussion regarding the City's regulation of Dwelling Rentals, and Vacation Rentals, which are commonly used interchangeably. Presently, our City Code makes references to both terms, and uses, however a distinction is made with regards to the allowance of such uses, within our designated zoning and overlay districts.

The Planning and Code Enforcement departments, earlier this year, considered the advancement of a prospective Ordinance to amend City Code Section 22-3. Definitions - Generally and 22-22. Allowed uses; in order to amend the nomenclature of dwelling rental to vacation rental, while seeking to resolve potential errors and omissions contained in the Use Table, as adopted via Ordinance L-295. The decision to abstain from the initiative was based primarily upon the potential legal repercussions, due to recent law enacted by the State of Florida, limiting municipal regulation of such uses. The proceeding sections detail the history of our regulation and discussion of such uses, the previous issue identified, and the current regulation(s) as interpreted and implemented with regards to these uses. It is requested that our City Attorney's office review the analysis of staff, and advise as to the accuracy of the presented interpretation, and prospects of carrying out revisions to our existing ordinances in order to provide clarification, without eliminating our authority to govern such uses under Florida State Statutes.

Staff Analysis:

History

The City Commission, on October 15th, 2001, adopted Ordinance K-114, amending Sections 22-3 of the City Code to update the definition of "Dwelling" as to exclude rentals for designated period, further providing a definition of "Dwelling rental" and allowing for application as Conditional Use in R-1 & R-2 Zones.

Ordinance K-114 originated from citizen concerns over the rental of single-family homes as transient lodging on a weekly and, in some cases, daily basis. The action sought to provide clarity and parameters

for dwelling units, while allowing the capacity for property owners, in the R-1 and R-2 zones, to pursue Conditional Use approval to rent dwelling units for less than six (6) months.

The adoption of Ordinance K-114 was closely followed by the preparation and approval of Ordinance K-148 to restore the opportunity for dwelling rentals to be pursued, however as Conditional Use, in R-3, R-4, R-4A, and R-5 zones, in addition to the previously adopted allowance in the R-1 and R-2 zones. At the time the Planning Board and City Commission were contemplating Ordinance K-114, discussions were centered solely upon the R-1 and R-2 zones, seemingly omitting consideration of more intense residential districts. Subsequently, the City Planning Board and City Commission processed the amendment, in early 2002, to include the capacity to consider Dwelling Rentals as Conditional Use in the **R-1 through R-5 districts**.

The noted Ordinances amended the definition of Dwelling (Dwelling Unit), and presented a new definition of Dwelling Rentals as follows:

Dwelling (Dwelling Unit): One or more rooms connected together in a building, constituting a separate, independent housekeeping establishment for a family, for owner occupancy or rental ~~on a weekly for six months or longer in R-1 or R-2 residential zones, or longer basis~~ physically separated from any other rooms or dwelling units which may be in the building, and containing sleeping and sanitary facilities and one kitchen.

Dwelling Rental (Dwelling Unit): One or more rooms connected together in a building, constituting a separate, independent housekeeping establishment, other than a motel/hotel, for purposes of rental on a daily, weekly or longer basis, though less than what is otherwise provided for a dwelling, physically separated from any other rooms or dwelling units which may be in the building, and containing sleeping and sanitary facilities and one kitchen.

South Beach Overlay

The City Commission, in 2007, adopted the South Beach Overlay District via Ordinance K-441, which sought to preserve, protect and enhance the unique barrier island environment through crafted regulations for the district. Beyond the specific regulations established specific for this overlay district, K-441 amended various definitions and created additional definitions in City Code Section 22-3. The adjustments to definitions were centered on clarifying that dwelling unit(s) were intended for owner occupancy or non-transient lodging, while developing specifics for sleeping units, motels, condo hotels, hotels, and resort hotels. The further delineation of each use sought to specify use standards and clarify parameters for consideration of density.

The replacement of the definition of Dwelling (Dwelling Unit) by the South Beach Overlay is as follows:

~~Dwelling (Dwelling Unit):~~ ~~One or more rooms connected together in a building, constituting a separate, independent housekeeping establishment for a family, for owner occupancy or rental for six months or longer in R-1 or R-2 residential zones, physically separated from any other rooms or dwelling units which may be in the building, and containing sleeping and sanitary facilities and one kitchen.~~

Dwelling unit: One or more rooms, designed, occupied, or Intended for owner occupancy, or rental for six months or longer in R-1 and R-2 residential zoning districts, used as a separate living quarter, with cooking, sleeping and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household.

The Use Table

The City Commission, on November 4th, 2013, adopted Ordinance L-295, which relocated all of the permitted and conditional uses for all of the zoning districts into a single, combined Use Table. The Use Table is located in a newly created Section of the Code, offering a “one-stop-shop” for reviewing uses permitted within the City. The adopted table also provides several additional uses that were not previously listed within the City Code, further expanding some of the eligible uses into additional zoning districts. The uses previously contained in Chapter 22 were intended for transcription into the newly created Use Table to ensure that use options were not diminished by adoption. In isolated incidences, errors have been identified in the transfer of uses and Use Table development which necessitate further review and possible action. The discussion and further review of dwelling rentals presented a scenario in which the transcription of uses was not exact, which may or may not have been intentional by Planning Staff, the Planning Board, and/or City Commission. The current, adopted Use Table, and the prior allowance for consideration of dwelling rentals within the respective zoning districts are presented below:

Current Allowance, as adopted within the Use Table:

ZONING DISTRICT	E1	E2	E3	R1	R2	R3	R4	R4A	R5
Overnight Accommodations									
-Bed & Breakfast	-	-	-	-	-	-	C	C	C
-Dwelling Rental	-	-	-	C	C	-	-	-	-
-Hotel/Motel	-	-	-	-	-	-	-	-	-
-Recreational Vehicle Park	-	-	-	-	-	-	-	-	-
-Resort Hotel	-	-	-	-	-	-	-	-	-

Allowance **Prior** to Transcription into the Use Table:

ZONING DISTRICT	E1	E2	E3	R1	R2	R3	R4	R4A	R5
Overnight Accommodations									
-Bed & Breakfast	-	-	-	-	-	-	C	C	C
-Dwelling Rental	-	-	C	C	C	C	C	C	C
-Hotel/Motel	-	-	-	-	-	-	-	-	-
-Recreational Vehicle Park	-	-	-	-	-	-	-	-	-
-Resort Hotel	-	-	-	-	-	-	-	-	-

*For visual purposes; Uses were previously written out within each district

The adoption of the Use Table, in its current form, presents a prohibition on dwelling rentals within all residential districts, with the exception of the R-1 & R-2 zones, which the use may be pursued via conditional use.

It is noted that the Edgartown Settlement District and Downtown Business and Entertainment Overlay exclusively present, describe, and provide use standards for “Vacation Rentals”, which are not contemplated within the overall use table, nor defined within our general definitions contained in Section 22-3. Definitions – Generally.

The Issue

Planning and Code Enforcement staff members identified the noted error and omission in the transcription of the previous considerations for “Dwelling Rentals”, which were previously sought to be offered further, and known as “Vacation Rentals”, to provide clarity in nomenclature.

Prior to the adoption of Ordinance L-295, the City of Fort Pierce Code of Ordinances granted the opportunity for Conditional Use application for such dwelling rentals within the E-3, R-1, R-2, R-3, R-4, R-4A, and R-5 zoning districts. As presented, approval of the Use Table within Ordinance L-295, restricted consideration to only the R-1 & R-2 zoning districts, seemingly in error. A previously text amendment was proposed to rectify the oversight, and improve terminology of the subject use, simply calling the use a “Vacation Rental”. The preparation of a draft ordinance and staff report for prospective updates included the review of recent actions by the State Legislature with regards to dwelling or vacation rentals. The actions, specifically contained in F.S.S. 509.032 Duties.—, effectively limit the regulatory authority of municipalities with regards to the subject use, providing acceptance of some longstanding restrictions in place, or adopted, prior to June, 1st, 2011.

It was the interpretation of staff that further amendment to the Use Table, with regards to the subject use, would jeopardize the City’s capacity to enforce the existing regulations and preclude the enforcement of the prospective changes. A case may be approached that the City is simply processing a scrivener’s error, seeking to revert the regulations to the previous form, limiting rentals to conditional use within the E-3 through R-5 districts, versus adopting new, more stringent, regulations.

Staff would request further review and guidance from the City Attorney’s office for this interpretation.

Current Interpretation and Implementation

The current Use Table, and definitions, within the City Code limit the rental of dwelling units within the R-1, and R-2, Single-family districts to six (6) months or more. The present standards allow for individual property owners within these two districts to apply for conditional use allowance for a dwelling rental to facilitate the rental of their home for a period less than six (6) months. The rental of a home within these districts for a period less than six (6) months, without an approved conditional use is a violation of our ordinances.

The City's adoption of the Use Table in 2013, in its present form, which "prohibits" dwelling rentals within the E-1, E-2, E-3, R-3, R-4, R-4A, and R-5, presents a potential regulatory concern with regards to the Florida State Statutes, based upon the amendment date. The affected districts in which the City "eliminated" or changed the regulation, or allowance of conditional use applications for the subject use is confined to the E-3, R-3, R-4, R-4A, and R-5 districts. With that being said, the establishment of dwelling rentals within the E-1 and E-2 districts remains prohibited, and seemingly not in conflict with the State Statutes. With regards to the City's capacity to restrict, limit, or enforce a prohibition on dwelling rentals within the E-3, R-3, R-4, R-4A, and R-5, it is staff's preliminary interpretation that we are unable to limit the use, within these districts, based up the 2013 date of adoption by the City, and overriding State Statutes.

The pertinent Florida State Statute Excerpts are as follows:

509.242 Public lodging establishments; classifications.—

(c) Vacation rental.—A vacation rental is 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.

509.032 Duties.—

(b) 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.



