

ORDINANCE 2023-03

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LAKE CLARKE SHORES FLORIDA, AMENDING CHAPTER 125, "ZONING," OF THE TOWN CODE OF ORDINANCES BY AMENDING ARTICLE VII, "SUPPLEMENTAL REGULATIONS," TO ADOPT A NEW DIVISION 16, "VACATION RENTALS;" PROVIDING FOR APPLICABILITY; PROVIDING FOR REGISTRATION AND INSPECTION; PROVIDING FOR VACATION RENTAL STANDARDS; PROVIDING FOR VIOLATIONS, ENFORCEMENT AND REMEDIES; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, prior to 2011, Florida's municipalities were free to regulate local land use issues under the Home Rule Authority granted them by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, in 2011, the Florida Legislature, through the enactment of Chapter 2011-119, Laws of Florida, preempted the local regulation of a specific land use known as vacation rentals, thereby preventing municipalities from enacting new regulations necessary to address any consequential or negative impacts caused by vacation rentals; and

WHEREAS, in 2014, the Florida Legislature, through the enactment of Chapter 2014-71, Laws of Florida, rescinded the complete preemption of the regulation of vacation rentals, but specifically mandated that local laws, ordinances or regulations could not prohibit vacation rentals or regulate the duration or frequency of vacation rentals; and

WHEREAS, Chapter 2014-71, Laws of Florida, returned some local control back to municipalities to mitigate the effects of vacation rentals in an attempt to make them safer, more compatible with existing neighborhood regulations and accountable for their proper operation; and

WHEREAS, the occupants of vacation rentals, due to the transient nature of their occupancy, are unfamiliar with local hurricane evacuation plans, the location of fire extinguishers, exit routes, pool and home safety features, and other similar safety measures that would ordinarily be provided to guests in traditional lodging establishments, i.e., hotels and motels; and

WHEREAS, if left unregulated, the occupants of vacation rentals located within established neighborhoods can disturb the quiet enjoyment of the neighborhood and create numerous secondary impacts, including noise, traffic and a greater demand on public services; and

WHEREAS, traditional lodging establishments are typically restricted to commercial and other non-residentially zoned areas where intensity of use is separated from less busy and quieter residential uses; and

WHEREAS, like many other municipalities throughout the State of Florida, the Town of Lake Clarke Shores wishes to impose standards both to provide for the safety and welfare of occupants of vacation rentals and to minimize any negative impacts caused by vacation rentals in residential areas, especially established single-family neighborhoods; and

WHEREAS, the Town of Lake Clarke Shores desires vacation rentals that are safe, conform to the character of the community, provide positive impacts for tourism, do not detract from property values and achieve greater neighborhood compatibility; and

WHEREAS, the Town's enactment of regulations applicable to vacation rentals is necessary to preserve the integrity of residential areas and neighborhoods and corresponding property values, while also protecting the health, safety and welfare of residents, property owners, investors and transient occupants of the Town; and

WHEREAS, the Town's regulations are intended to supplement, not replace, any existing federal or state law or regulation or any existing controls within established residential units served by homeowner or condominium associations; and

WHEREAS, the Town's regulations neither prohibit vacation rentals nor restrict the duration or frequency of vacation rentals; rather they are intended to address life safety and compatibility concerns and the secondary effects of vacation rentals located within residential areas and neighborhoods; and

WHEREAS, the Town Council determines that the adoption of this Ordinance benefits the public health, safety and welfare of the residents and citizens of the Town, as well as visitors to the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LAKE CLARKE SHORES, FLORIDA as follows:

Section 1. The foregoing "Whereas" clauses are hereby ratified and incorporated herein.

Section 2. The Town Council hereby amends Article VII, "Supplemental Regulations," of Chapter 125, "Zoning," of the Town Code of Ordinances by adopting a new Division 16, "Vacation Rentals," to read as follows:

DIVISION 16. VACATION RENTALS

Sec. 125-1100. Applicability.

The regulations set forth in this division shall apply to any building or structure utilized as a vacation rental within any Town zoning district. A vacation rental is a dwelling unit that is also a transient public lodging establishment, but is not a time share project. A transient public lodging establishment, as defined by section 509.013(4)(a), Florida Statutes, as amended, is any unit which is rented out to guests more than three (3) times in a calendar year for periods of less than thirty (30) days or one (1) calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods less than thirty (30) days or one (1) calendar month, whichever is less.

Sec. 125-1101. Registration and inspection.

(a) *Registration required.* It shall be unlawful for any person or entity to operate a vacation rental within the corporate limits of the Town without first registering the vacation rental with the Community Development Department in accordance with the requirements of this division. All existing vacation rentals shall be required to be registered within six (6) months of the effective date of this division.

(b) *Initial registration.* Every vacation rental owner or operator shall first register with the town by submitting to the Community Development Department a properly completed and notarized registration form, as prescribed by the Town, together with a registration fee in an amount established by resolution of the Town Council. A separate registration form shall be required for each vacation rental. The registration form shall be accompanied by the following:

- (1) A copy of the business tax receipt issued by the Town;
- (2) A copy of the Florida Department of Business and Professional Regulation license as a transient public lodging establishment/vacation rental;
- (3) A copy of the vacation rental's current and active certificate of registration with the Florida Department of Revenue for the purpose of collecting and remitting sales taxes, transient rental taxes and any other taxes required by law to be remitted, as applicable;
- (4) Proof of the establishment of an account with the Palm Beach County Tax Collector for the payment of tourist development taxes or that payment is arranged through a third party;
- (5) Copies of the postings required by Section 125-1102 (e) below;

- (6) A copy of a sample lease agreement; and
- (7) A completed vacation rental responsible party designation, in the format prescribed by the town, which includes the information required by Section 125-1102 (d) below.
- (c) *Registration renewal.* After a vacation rental is initially registered, the registration shall be renewed by October 1st of each year through the execution of a renewal affidavit, in the format prescribed by the Town, and the payment of the renewal fee established by resolution of the Town Council.
- (d) *Registration updates.* Any changes to the information or submittals included with the initial registration must be reported to the Town within thirty (30) days of the occurrence of such changes.
- (e) *Incomplete registration/renewal.* If the registration form or renewal form submitted pursuant to this section is incomplete, the registrant shall be informed of such deficiency and shall have ten (10) days to correct the deficiency.
- (f) *Inspection.* Inspection by the Town to verify compliance with the requirements of the division may be required subsequent to initial registration with the Town and annually after each renewal. Non-compliance with the requirements of this division discovered during any inspection shall be treated as a violation of the Town Code and be processed in accordance with Section 125-1103 below. Failure to allow the Town to inspect the vacation rental within twenty (20) days after the Town notifies the owner or responsible party that the Town is ready to conduct an inspection shall constitute a separate violation of the Town Code and be processed in accordance Section 125-1103 below.
- (g) *Evidence of vacation rental operation.* Advertising, listing or posting a property on the internet, utilizing any mass communication medium or in any publication as being available for use as a vacation rental creates a rebuttable presumption that the owner or operator is utilizing the property as a vacation rental. Nothing set forth herein precludes the Town from presenting other forms of evidence of vacation rental operation.
- (h) *False information.* It shall be unlawful for any person to give any false or misleading information in connection with the requirements and obligations set forth in this section.

Sec. 125-1102. Vacation rental standards.

No person or entity shall operate a vacation rental within the Town unless such vacation rental complies with the following standards:

(a) Minimum life/safety requirements:

- (1) *Swimming pool, spa and hot tub safety.* A swimming pool, spa or hot tub shall comply with the current standards of the Residential Swimming Pool Safety Act, as set forth in Chapter 515, Florida Statutes.
- (2) *Smoke and carbon monoxide (CO) detection and notification system.* If an interconnected and hard-wired smoke and carbon monoxide (CO) detection and notification system is not in place within the vacation rental, then one such system shall be required to be installed and maintained on a continuing basis consistent with the requirements of Section R314, Smoke Alarms, and Section R315, Carbon Monoxide Alarms, of the Florida Building Code-Residential.
- (3) *Fire extinguisher.* A portable, multi-purpose dry chemical 2A:10B:C fire extinguisher shall be installed, inspected and maintained in accordance with NFPA 10 on each floor/level of the dwelling unit. The extinguisher(s) shall be installed on the wall in an open common area or in an enclosed space with appropriate markings visibly showing the location.
- (4) *Battery powered emergency lighting of primary exit.* Battery powered emergency lighting which provides illumination automatically in the event of any interruption of normal lighting shall be provided for a period of not less than one hour to illuminate the primary exit.
- (5) *Emergency egress and maintenance.* Halls, entrances and stairways within a vacation rental shall be clean and ventilated. Hall and stair runners shall be kept in good condition. Rails shall be installed on all stairways and around all porches and steps.

(b) *Maximum occupancy.* In no event shall maximum occupancy of such dwelling unit exceed two persons per bedroom plus two additional persons.

(c) *Lease requirements.* There shall be a written or online lease, rental, tenant or other recorded agreement memorializing each vacation rental

tenancy between the owner or responsible party and the occupant(s). The agreement shall, at a minimum, contain the following information:

- (1) The maximum number of occupants for the unit as specified in subsection (b) above;
- (2) The number of parking spaces associated with the vacation rental unit, if applicable, and the location of such spaces;
- (3) The names and ages of all persons who will be occupying the unit;
- (4) The dates of such occupancy; and
- (5) A statement that all occupants must evacuate from the vacation rental following any evacuation order issued by local, state or federal authorities.

The Town reserves the right to request and receive a copy of any vacation rental lease or rental agreement from the owner or responsible party at any time.

(d) *Vacation rental responsible party.* Each vacation rental must designate a responsible party to respond to routine inspections as well as non-routine complaints and any other problems related to the operation of the vacation rental. The property owner may serve in this capacity or shall otherwise designate another person eighteen (18) years or older to perform the following duties:

- (1) Be available by telephone at the listed phone number twenty-four (24) hours per day, seven (7) days per week and be capable of handling any issues relating to the operation of the vacation rental;
- (2) If required, be willing and able to come to the vacation rental within two (2) hours following notification from an occupant, the owner, or the Town to address any issues relating to the operation of the vacation rental;
- (3) Maintain a record of all lease or rental agreements for the vacation rental;
- (4) Receive service of any legal notice on behalf of the owners for violation of the requirements set forth in this division; and

(5) Otherwise monitor the vacation rental to ensure compliance with the requirements set forth in this division.

(e) *Minimum vacation rental information required postings.* The vacation rental shall be posted with the following information, either on the back of or next to the main entrance door or on the refrigerator:

(1) The name, address and telephone number of the vacation rental responsible party;

(2) The days of trash pick up and recycling pick up and a notification that all garbage or trash must be placed in a garbage or trash can or other approved garbage receptacle and that all recyclables must be placed in approved recyclable containers;

(3) The location of the nearest hospital;

(4) The location of designated parking spaces/areas, if applicable.

(f) *Other regulations.* Vacation rentals must comply with all other regulations, standards and requirements set forth in the Town Code of Ordinances, including, but not limited to, the requirements of Chapter 6 (Animals), Chapter 10 (Buildings and Building Regulations), Chapter 26 (Environment), Chapter 34 (Nuisances and Noise), Chapter 58 (Traffic and Vehicles), and Chapter 125 (Zoning).

Sec. 125-1103. Violations; remedies; enforcement.

(a) *Violations.* Non-compliance with any provision of this division shall constitute a violation of the Town Code of Ordinances and each day the violation exists shall constitute a separate and distinct violation.

(b) *Remedies and enforcement.* Any violations of this division may be enforced pursuant to Section 1-11 of the Town Code of Ordinances, through the code enforcement process set forth in Chapter 2, Article IV of the Town Code of Ordinances, or through any other manner authorized by law, including, but not limited to, injunctive relief.

(c) *No waiver.* A valid vacation rental registration shall not be construed as a waiver of any of the requirements contained within the Town Code of Ordinances or the Town's Comprehensive Development Plan nor shall such registration be construed as approval of a use or activity that would otherwise be illegal under Florida law or prohibited by the Florida Building Code or the Florida Fire Prevention and Life Safety Code.

Section 3. The provisions of this Ordinance shall become and be made a part of the Code of the Town of Lake Clarke Shores, Florida.

Section 4. If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional, inoperative or void, such holding shall not affect the remainder of the Ordinance.

Section 5. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

Section 6. This Ordinance shall become effective immediately upon adoption.

FIRST READING this ____ day of _____, 2023.

PUBLISHED this ___ day of _____, 2023, in _____.

PASSED AND ADOPTED this ___ day of _____, 2023, on second and final reading.

TOWN OF LAKE CLARKE SHORES, FLORIDA

| | FOR | AGAINST |
|--|-------|---------|
| BY: _____ Gregory Freebold, Mayor | _____ | _____ |
| _____ | _____ | _____ |
| Robert M. W. Shalhoub, Vice Mayor | _____ | _____ |
| _____ | _____ | _____ |
| Valentin Rodriguez, Jr., President Pro Tem | _____ | _____ |
| _____ | _____ | _____ |
| Robert O. Gonzalez, Council Member | _____ | _____ |
| _____ | _____ | _____ |
| Jon Maples, Council Member | _____ | _____ |

ATTEST:

BY: _____
Mary Pinkerman, CMC, Town Clerk