TOWN OF MELBOURNE BEACH

TOWN COMMISSION WORKSHOP

JUNE 18, 2024

AGENDA PACKET

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Town of Melbourne Beach

PUBLIC NOTICE

AGENDA

TOWN COMMISSION WORKSHOP
TUESDAY, JUNE 18, 2024 at 6:00 p.m.
COMMUNITY CENTER – 509 OCEAN AVENUE

Commission Members:
Mayor Alison Dennington
Vice Mayor Sherri Quarrie
Commissioner Corey Runte
Commissioner Marivi Walker
Commissioner Adam Meyer

Staff Members:
Town Manager Elizabeth Mascaro
Town Clerk Amber Brown

PURSUANT TO SECTION 286.0105, FLORIDA STATUTES, THE TOWN HEREBY ADVISES THE PUBLIC THAT: In order to appeal any decision made at this meeting, you will need a verbatim transcript of the proceedings. It will be your responsibility to ensure such a record is made. Such person must provide a method for recording the proceedings verbatim as the Town does not do so.
In accordance with the Americans with Disability Act and Section 286.26, Florida Statutes, persons needing special accommodations for this meeting shall, at least 5 days prior to the meeting, contact the Office of the Town Clerk at (321) 724-5860 or Florida Relay System at 711.

I. Call to Order

II. Roll Call

III. Pledge of Allegiance and Moment of Silence

IV. New Business

A. Discussion on short term rentals

V. Public Comment

After being acknowledged by the Mayor, members of the public should state their name and address for the record. The Commission encourages citizens to prepare their comments in advance. Each individual will have three (3) minutes to address the Commission on any topic(s) related to Town business, not on the Agenda. Please remember to sign the sign-in sheet provided if you will be speaking at the meeting.

VI. Adjournment

IN THE THIRTEENTH JUDICIAL CIRCUIT FOR THE STATE OF FLORIDA
CIVIL APPELLATE DIVISION

SUPER HOST, LLC,
Appellant,

v.

CITY OF TAMPA,
Appellee.

Case no.: 20-CA-5743
Division: X
Code Enf. Case No.: COD-20-0001288

_____________________________________/

APPELLATE OPINION

This case is before the court to review an order of the code enforcement special magistrate finding Appellant Super Host, LLC in violation of the city code for improper use of property within its zoning designation. The subject South Tampa property had been used as a vacation or short-term rental for a university lacrosse team in a residential area zoned RS-60. In the RS-60 zoning classification, the city code prohibits rentals for fewer than seven days or to more than four unrelated persons (the single-family requirement). The property was found to have violated the code's zoning classification on both grounds in a single transaction. In support of its appeal, Appellant contends that no competent, substantial evidence supports the order finding violation, where an alleged contract provides that the rental was for the minimum seven days and for occupancy by one family. In addition, Appellant argues that it was denied due process for myriad reasons, including 1) that Appellant was not given an opportunity to cure the violations, 2) it was denied a hearing by a neutral fact-finder, and 3) because it was assessed an excessive fine. Witness testimony provided competent, substantial evidence that the term of the rental was for fewer than seven days and to more than four unrelated persons. Additionally, Appellant was afforded due process in that it was provided adequate notice and opportunity to be heard by a neutral fact-finder. The City's refusal to provide Appellant an opportunity to cure did not deny Appellant due process because the violations, being transient, were not curable. Appellant is correct, however, that the special magistrate departed from the essential requirements of law when he imposed a fine in an amount reserved for irreparable violations, where the code did not consider the subject violations to be irreparable. Accordingly, the decision is affirmed in part and reversed in part, and the matter remanded for further proceedings.

FACTUAL BACKGROUND

On January 20, 2020, Gail Wallach, the coach for the University of Alabama (Huntsville) women's lacrosse team, used *homeaway.com* to rent the subject property for the team's lodging in advance of an upcoming match with University of Tampa. As reflected by documents the investigator obtained from *homeaway.com*, the reservation

was scheduled for two nights beginning Friday, February 7, and ending Sunday, February 9, 2020, for which the sum of $4,896.00 was paid. The investigator also received photographs taken during the team's occupancy. They showed a number of team members at the property, additional staff, and the large coach-style bus that transported the group. Because the rental allegedly violated the city code on two bases, specifically that the rental term was less than the seven-day minimum and also ran afoul of the "single-family" requirement,[1] the City issued a combination notice of violation and notice of hearing several months later.[2]

THE CASE

On May 29, 2020, Appellant Super Host, LLC was served with a notice of violation and notice of hearing. As required by section 9-3(a), Tampa, Fla., Code, the notice of violation named Appellant as the violator and advised Appellant that its property at 4209 W. Vasconia Street in Tampa violated sections 27-43 (defining "dwelling unit"), and 27-156 (setting forth zoning districts and their permitted uses) from February 7 through February 9, 2020. It went on to advise that the property was zoned RS-60, residential single family, and permitted for owner occupancy or rental on a weekly or longer basis. The notice directed Appellant to "cease illegal use of subject property as a short-term rental." Although the notice explained that a dwelling unit is a "habitable unit for occupancy by one family only; for owner occupancy or for rental, lease or other occupancy on a weekly or longer basis," it did not set forth specific facts indicating a violation of the single-family requirement. The notice did not offer an opportunity to cure the violation. A notice of hearing accompanied the notice of violation.

Appellant appeared for the hearing and was represented by counsel. At the conclusion of the hearing, the special magistrate found Appellant's property to have violated the code because it 1) was rented for less than a week—the minimum time provided for dwelling units in the code—and 2) was rented to more than four unrelated persons in violation of the single-family occupancy requirement. Concluding that the violation was irreparable, the special magistrate imposed a $10,000.00 fine. This timely appeal followed.

JURISDICTION AND STANDARD OF REVIEW

This court has appellate jurisdiction to review code enforcement orders pursuant to sections 162.11 and 26.012, Florida Statutes. Code enforcement orders are reviewed to determine whether Appellant was afforded due process, whether the decision comports with the essential requirements of law, and whether competent, substantial evidence supports the decision. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

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[1] The "single-family" violation appears in the notice as part of the definition of "dwelling unit."
[2] The COVID pandemic was cited as the reason for the delay in issuing the citation and notice of hearing.

DEPARTURE FROM THE ESSENTIAL REQUIREMENTS OF LAW / COMPETENT, SUBSTANTIAL EVIDENCE

Appellant argues that no competent, substantial evidence supports the special magistrate's decision finding a code violation. If competent, substantial evidence supports the local government's decision, the decision is presumed to adhere to the essential requirements of law. *State v. Wiggins*, 151 So. 3d 457, 464 (Fla. 1st DCA 2014) (*citing Dusseau v. Metro. Dade Cnty. Bd. of Cnty. Comm'rs*, 794 So. 2d 1270, 1276 (Fla. 2001)). As noted in the facts, Appellant was found to have violated the proper use of zone on two grounds—the length of the rental term and because it was rented to more than four unrelated persons.

The short-term rental violation.

Regarding the length of the rental term, the City argues that a two-day rental is a violation of sections 27-43, 27-156, and 27-156 Table 4-1, Tampa, Fla., Code. In the property's zoning classification, which is RS-60, residential dwellings are the most common use. The code defines "dwelling unit" as:

> Dwelling unit: A room or group of rooms forming a single independent habitable unit used for or intended to be used for living, sleeping, sanitation, cooking and eating purposes by one (1) family only; for owner occupancy or for rental, lease or other occupancy on a weekly or longer basis; and containing independent kitchen, sanitary and sleeping facilities.

Tampa, Fla., Code §27-43 (emphasis added).

The definition of dwelling unit incorporates a proscription against short-term rentals by requiring that rental terms be for a week or longer. From there, the code's section 27-156, and its Table 4-1, address *allowable* uses in the specific zones. They contain the official schedule of district regulations.[3] The code's section 27-156 provides in pertinent part:

Sec. 27-156. - Official schedule of district regulations.

> (a) Schedule of statements of purpose and intent. The following array presents for the several districts the statements of purpose and intent applicable to each district.
>
> (1) Single-family residential districts. Single-family districts provide for detached residential housing development on a variety of lot sizes in accordance with the Tampa Comprehensive Plan. Accessory uses, compatible related support uses for residential development and special uses are also permitted or permissible.[4]

[3] https://library.municode.com/fl/tampa/codes/code_of_ordinances?nodeId=COOR_CH27ZOLADE_ARTIIIESZODIDIRE_DIV1GEZODI_S27-156OFSCDIRE

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d. RS-60 residential single-family. This district provides areas for primarily low density single-family detached dwellings similar to those provided for in the RS-150, RS-100 and RS-75 single-family districts, but with smaller minimum lot size requirements.

Table 4-1 contains the schedule, in table form, of permitted, accessory, and special uses by zoning district.[5] It prohibits the use of land or structures "that are not expressly listed in the schedule of permitted uses by district as permitted principal uses or permitted accessory uses…in that district." Tampa, Fla. Code, § 27-156.

The list of permitted uses (no administrative approval required) is limited to single family detached dwellings, day care and nurseries,[6] golf courses, public use facilities,[7] and temporary film production. Uses listed as permitted special uses may be established in that district only after approval of an application for a special use permit in accordance with the procedures and requirements in Article II, Division 5. Accessory structures and living facilities, as well as some commercial uses and home businesses fall in this category. Congregate living facilities and bed-and-breakfasts are prohibited uses in the zone, as are hotels and motels. Vacation or short-term rentals are not even a listed category, and, therefore, are prohibited. Where the code limits the permitted uses in the zone primarily to dwellings, defines dwellings to include minimum tenancies and limits occupancy to a single family, and omits short-term rentals of any kind as a permitted use in the zoning classification, it makes clear that short-term rentals in residential areas are prohibited.

Competent, substantial evidence supports that the lacrosse team occupied the space for only two days. Several neighbors testified to it. The transaction details from *homeaway.com* confirmed that the reservation was from February 7-9, 2020. The coach signed a sworn affidavit that she rented the property for only two days. Appellant's representative, Ryan Slate, attempted to rebut the foregoing evidence by propounding what purported to be a contract signed by the coach reserving the property for seven days and limiting the rental to a single family. Appellant argued that the two-night stay or *occupancy* does not negate a seven-day *lease*. In a sworn affidavit, however, the coach denied signing any such document. Appellant did not subpoena the coach and was,

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[4] In RS-60, the only permitted accessory use relates to parking. Tampa, Fla., Code § 27-156, Table 4. Special uses require administrative approval. *Id.*

[5] See link in footnote 3.

[6] Day care facilities and nurseries require no administrative approval if limited to five persons or fewer. Tampa, Fla. Code, § 27-156, Table 4.

[7] Public use facility is defined as "[t]he use of land, buildings or structures by a municipal or other governmental agency to provide protective, administrative, social and recreational services directly to the general public, including police and fire stations, municipal buildings, community centers, public parks and any other public facility providing the above services, but not including public land or buildings devoted solely to the storage and maintenance of equipment and materials and not including public cultural facilities or public service facilities." Tampa, Fla., Code § 27-43.

therefore, unable to authenticate the coach's signature. As a result, the special magistrate gave it little, if any, weight. It is the province of the special magistrate, as fact-finder, to consider, weigh, and resolve conflicts in evidence. *Naples Estates Ltd. P'ship v. Glasby,* 331 So. 3d 863, 866 (Fla. 2d DCA 2021) (internal citations omitted). Moreover, this court is not permitted to reweigh the evidence presented even if it might reach a different conclusion. *City of Deland v. Benline Process Color Co., Inc.*, 493 So. 2d 26, 28 (Fla. 5th DCA 1986), *citing Bd. of Cnty. Comm'rs of Pinellas Cnty. v. City of Clearwater*, 440 So. 2d 497, 499 (Fla. 2d DCA 1983).

Thus, the City met its burden with regard to the short-term rental violation. Tampa, Fla., Code § 9-108(l).

The "single-family" violation.

The second basis for concluding that a violation occurred was that the rental ran afoul of the zone's single-family occupancy requirement. Under the code, a family can be any number of related persons,[8] but no more than four unrelated persons may share a dwelling in residential areas. Tampa, Fla., Code § 27-43 (defining "family" and "dwelling"). There was no meaningful dispute that the 20 or so teammates and staff were not related. Appellant again argued that the above-mentioned lease between Appellant and the tenant expressly provided that "vacation rental is for a 'family' rental, which means only 1 family[,]" and further defined the term "family" as it is in the code. But other evidence presented showed that Appellant's representative Ryan Slate met the tenants at the property upon their arrival and was aware a university lacrosse team would be staying there. Appellant did not object to this evidence. [9]

As noted above, this Court is not free to reweigh the evidence. Whether or not the contract was authentic, competent evidence supports that Appellant's representative met the tenants and provided access to the property—after the contract was purportedly signed. Thus, Appellant's intent to pass the responsibility to the tenant does not negate Appellant's knowledge that a violation occurred or its responsibility for it. *See* Tampa, Fla., Code § 1-6(b). If the facts support that a violation occurred, the reviewing court will not disturb the decision. *Orange Cnty. v. Butler*, 877 So. 2d 810, 813 (Fla. 5th DCA 2004); *see also Dorian v. Davis*, 874 So. 2d 661, 663 (Fla. 5th DCA 2004). Here, again, the City met its burden to prove that the occupancy was not by a family as defined by the code.

[8] Related by blood, marriage, adoption, or legal guardianship.
[9] Because Appellant affirmatively defended against the allegation that he violated the single family requirement, attempted to introduce evidence in support of that defense, and did not object to evidence that he personally met the party at the premises, this single-family aspect of the violation, although not clearly noticed as a violation, is deemed to have been tried by consent. *Federal Home Loan Mrtg. Corp. v. Beekman,* 174 So. 3d 472, 475 (Fla. 4th DCA 2015) (when there is no objection to the introduction of evidence on that issue, it is tried by consent).

DUE PROCESS

State law and the city code recognize that the formal rules of evidence do not apply to code enforcement hearings, "but fundamental due process shall be observed and shall govern the proceedings." § 162.07(3), Fla. Stat.; Tampa, Fla., Code § 9-108(i). The fundamentals of the process due in administrative proceedings are fair notice and an opportunity to be heard in a meaningful manner. *Keys Citizens for Responsible Gov't, Inc. v. Fla. Keys Aqueduct Auth.*, 795 So. 2d 940, 948 (Fla. 2001). Although Appellant appeared, was represented by counsel, and participated in the hearing, it now contends its due process rights were violated on several grounds, including that Appellant was not given an opportunity to cure the violations, it was assessed an excessive fine, and it was denied a hearing by a neutral fact-finder.

Adequacy of Notice/Inability to cure.

Consistent with the requirements of section 9-3(b) and (c), and section 9-107(e), the city's notice advised Appellant of the date, location, and facts giving rise to the violation, as well as the date and location of the scheduled hearing. Hearings are scheduled only if a previous opportunity to cure is not exercised, or when, as here, a violation cannot be cured. Appellant contends that it was denied due process because neither the notice of violation nor notice of hearing afforded Appellant the opportunity to cure the alleged violations. The question is whether omitting an express statement that the violations were not curable from the notice of hearing violated Appellant's due process rights. The short answer to this question is no.

Although subject to conditions, the code often, but not always, affords the opportunity to cure code violations. Tampa, Fla., Code § 9-3(c). Violations for which the opportunity to cure is not provided include repeat violations, threats to public health, violations deemed irreparable or irreversible, and those that are transient and itinerant. Tampa, Fla., Code §§ 9-3(c), 9-107(b-e).

During the course of the hearing, the assistant city attorney, when asked why Appellant was not given an opportunity to cure the violation before requiring it to appear for hearing, said that the violation, being "irreparable," could not be cured. *See e.g.,* Tampa, Fla., Code § 9-2 (definition of "irreparable" or "irreversible"), § 9-3(c) (notice of *violation* not required for specific types of code violations, including those that are irreparable). The notice did not specifically advise Appellant that the violation was considered irreparable or otherwise incurable, it simply omitted a time to cure and scheduled the matter for a hearing.

"Irreparable" is defined as "unable to return to the original condition." Tampa, Fla. Code § 9-2. When a violation is not curable, giving the violator an opportunity to cure is obviously an exercise in futility, and the code recognizes its futility by withholding time to correct such violations. Tampa, Fla., Code § 9-3(c). A survey of the city code, however, revealed that certain violations are *expressly* characterized as irreparable or irreversible. Some examples include the unpermitted removal of protected trees in

violation of § 27-284.2.4; retail sale of nitrogen-containing fertilizer in violation of § 21-148; destruction of upland habitat in violation of § 27-287.22; and dumping in storm drains in violation of § 21-9, Tampa, Fla., Code. Large fines accompany those violations, and specific code sections alert the public to that possibility.[10] The violation alleged here—improper use of zone—is not deemed irreparable under the code, and the assistant city attorney's characterization of the violation as irreparable was mistaken.

In addition to irreparable violations, other classes of violations allow the city to proceed directly to a hearing. These include those that are "transient" or "itinerant." *See* Tampa, Fla., Code § 9-2, (defining "transient" or "itinerant" violations).[11] Because they are temporary and cannot be undone, transient violations, like irreparable or irreversible violations, are not curable. Tampa, Fla., Code § 9-3(c).[12] The code's procedure for handling transient violations are similar to those provided for irreparable ones in that the code allows inspectors to determine that a violation is transient and issue an immediate citation without giving the violator an opportunity to correct the violation. *See* Tampa, Fla., Code § 9-3(c)(1), (3). Section 9-3(c)(1) allows the inspector to issue a notice of hearing in accordance with section 9-107, Tampa, Fla., Code. In turn, section 9-107 (c-e) sets forth notice procedures for those situations for which no opportunity to cure is provided. Subsection (c) addresses notices for repeat violations, subsection (d) addresses notices for health and safety violations, and subsection (e) addresses notices for irreparable violations. But section 9-107 does not mention transient violations. Because of its omission, "[i]t is necessary to fill the procedural gaps…by the common-sense application of basic principles of due process." *City of Tampa v. Brown*, 711 So.2d 1188, 1188 (Fla. 2d DCA 1998).

In *all* instances in which a code enforcement officer has reason to believe that a violation is either a threat to public health and safety or is otherwise not correctible, the officer must attempt to notify the violator and schedule a hearing, which the code enforcement officer did. §9-107 (c-e), Tampa, Fla., Code. Appellant was provided ample notice of the violation and hearing, as well as an opportunity to be heard and defend

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[10] *See e.g.* Tampa, Fla., Code § 21-9, which states:

> (a) It shall be unlawful for any individual to introduce any foreign matter (including, but not limited to, trash, leaves, grass clippings, debris, garbage, fill, construction materials, organic or inorganic pollutants, acids, and petroleum products), whether by action or inaction, to any public drainage system including but not limited to streets. It is a public nuisance for any person to damage, obstruct or interfere with the operation of any public drainage system, whether by action or inaction.
>
> (c) A violation of paragraph (a) is deemed an *irreparable and irreversible* violation (emphasis added.)

[11] Although the nature of the subject violations as transient were not argued in the proceeding below, it is axiomatic that an appellate court will uphold a lower tribunal's ruling where, as here, an alternative theory *supports* it. *Robertson v. State*, 829 So. 2d 901, 906 (Fla. 2002). A court may not rely on unpreserved argument to reverse a judgment, however.

[12] Transient violations cannot be cured, only punished. Were that not the case, local governments would have no enforcement mechanism against transient violations.

against the allegations. *Massey v. Charlotte Cnty.*, 842 So. 2d 142, 146 (Fla. 2d DCA 2003). Appellant was represented by counsel, and indicated his understanding of the elements of the violation. Although the special magistrate was misinformed as to why the violation was incurable (irreparable as opposed to transient), the assistant city attorney's misstatement did not change the fact that the violation was incurable, and Appellant presented no authority to suggest that the notice was rendered ineffective by the City's omission of a specific statement to that effect. The notice was, therefore, adequate for the proceeding, and Appellant was not denied due process because he was not provided an opportunity to cure the violation.

Departure from the Essential Requirements of Law / Amount of Fine

Although the mischaracterization of the violation as irreparable does not affect the *adequacy* of the notice in this case, it was not without consequences. When a violation is determined to be irreparable, it is subject to a significant fine—up to $15,000. *See* Tampa, Fla. Code § 9-110(e). Transient violations, unlike irreparable ones, do not appear to be subject to such enhanced penalties. Therefore, the special magistrate departed from the essential requirements of law and denied Appellant due process when he treated the violation as irreparable and assessed a $10,000 fine. *See e.g. Maple Manor, Inc. v. City of Sarasota,* 813 So. 2d 204, 206-07 (Fla. 2d DCA 2002) (petitioner denied fair notice when penalties imposed exceeded board's authority). In light of the imposition of a fine reserved for the most serious violations, this cause must be remanded to allow the special magistrate to reconsider its amount under appropriate provisions of the code. In so doing, the Court does not suggest a specific amount to be imposed.

Right to an Impartial Fact-finder and Form of Judgment

Appellant also contends that his due process right to an impartial fact-finder was violated when the special magistrate recalled a previous proceeding involving the same Appellant and subject matter. The special magistrate went on to inquire why the matter was not being handled as a repeat violation.[13] Appellant suggests also that the special magistrate gave more consideration to the coach's sworn affidavit than the contract the coach denied signing. It is the province of the special magistrate to resolve conflicts in the evidence. *Glasby,* 331 So. 3d at 866. Moreover, nothing about the special magistrate's inquiry into a past proceeding appears to have negatively reflected on his ability to remain impartial and neutral. *Cf. Turner v. State*, 745 So. 2d 456, 458 (Fla. 4th DCA 1999) (it was not improper for court to raise questions regarding case status without compromising neutrality), *citing McFadden v. State,* 732 So. 2d 1180, 1185 (Fla. 4th DCA 1999).

[13] The special magistrate's recall was accurate in that Appellant was previously the subject of a code enforcement proceeding on the same property. It was, however, dismissed for unknown reasons. Because no violation had been found in the earlier proceeding, the underlying matter could not be, and was not, handled as a repeat violation.

Finally, the Court agrees with Appellant that the order finding violation is defective because it fails to set forth facts as required by the code, together with any legal conclusions. Tampa, Fla., Code § 9-108(n). Mere recitation of the code provisions allegedly violated does not comply with the requirement to set forth findings of fact.

CONCLUSION

Where neighbors testified as to the two-day rental between February 7-9, 2020, the tenant admitted to renting the property for only two days, and transaction details confirmed the two-day reservation, competent, substantial evidence supports the magistrate's conclusion that Appellant violated the seven-day minimum rental requirement in the RS-60 zoning classification. Similarly, where the evidence showed that Appellant knew that approximately 20 team members and university staff occupied the property during the subject rental term, and provided no rebuttal evidence suggesting that they were related, the special magistrate's conclusion that more than four unrelated persons stayed on the property is supported, and a violation of the single-family requirement is sustained.

But where the City conflated *transient* violations with those that are *irreparable*, both of which are not afforded an opportunity to cure under the code, the Court agrees with Appellant that the $10,000.00 fine must be re-evaluated. Accordingly, the matter is remanded for the special magistrate to reconsider the amount of the fine under the code provisions applicable to improper uses of zone.

It is therefore ORDERED that the decision of the code enforcement special magistrate is AFFIRMED with regard to the finding of code violations. It is FURTHER ORDERED that the $10,000.00 fine is QUASHED and the cause is REMANDED for the special magistrate to conduct further proceedings consistent with this opinion.

ORDERED in Tampa, Hillsborough County, Florida, on the date imprinted with the Judge's signature.

Electronically Conformed 10/24/2022
Emily A. Peacock
By:____
EMILY PEACOCK, Circuit Judge

BARBAS, J., Concurs.

MOE, J., Dissenting.

I would reverse in its entirety the special magistrate's order finding an irreparable violation. I would do so with instructions to (1) conduct a properly noticed hearing and (2) if a violation is found, determine the proper amount of the fine.

I.

Procedural due process requires fair notice and an opportunity to be heard and defend. *State ex rel. Gore v. Chillingworth*, 171 So. 649, 654 (Fla. 1936). A general notification that some aspect of the case will be called up will not pass muster; fair notice means the specific matter to be adjudicated must be identified. *See, e.g.*, *Haeberli v. Haeberli*, 157 So. 3d 489, 490 (Fla. 5th DCA 2015) (reversing on due process grounds when one motion was noticed for hearing but two other motions not included in the notice were adjudicated); *Brill v. Brill*, 905 So. 2d 948 (Fla. 4th DCA 2005) ("It is generally a due process violation for a trial court to determine matters not noticed for hearing."); *Epic Metals Corp. v. Samari Lake E. Condo. Ass'n, Inc.*, 547 So. 2d 198, 199 (Fla. 3d DCA 1989) ("A trial court violates a litigant's due process rights when it expands the scope of a hearing to address and determine matters not noticed for hearing.").

The opportunity to be heard and defend oneself is, in a case like this, bound up with notice. The word "defend" in the context of a court proceeding means "to deny or oppose the right of a plaintiff in regard to a wrong charged." Webster's Third New International Dictionary (Unabridged) 590 (2002). To have a meaningful opportunity to defend, the "wrong charged" needs to be known to the one mounting the defense.

Under the Code, when a property owner receives a notice of violation the notice should in most instances give the owner an opportunity to cure. *See* Tampa, Fla. Code § 9-107(b) (2022) ("Except as provided in subsections (c), (d), and (e), if a violation of the City Code or city ordinances is observed, the code enforcement officer shall notify the violator and give time to correct the violation."). No opportunity to cure need be given for violations that are repeated, considered by the code enforcement officer to be irreparable or irreversible, or believed by the code enforcement officer to present a serious threat to public health, safety, and welfare. *Id.* But when the code enforcement officer relies on one of those exceptions and does not give an opportunity to cure, the Code requires that the property owner be notified that the exception applies. The use of the word "shall" in the Code means this is not optional. *Izaguirre v. Beach Walk Resort/Travelers Ins.*, 272 So. 3d 819, 820 (Fla. 1st DCA 2019) ("Based on its plain and ordinary meaning, the word 'shall' in a statute usually has a mandatory connotation."); *Persaud Props. FL Invs., LLC v. Town of Ft. Myers Beach*, 310 So. 3d 493, 496 (Fla. 2d DCA 2020) (Black, J.) (municipal ordinances are subject to the same rules of construction as statutes).

For example, Section 9-107(c) provides that the owner has no opportunity to cure if the violation is perceived to be a repeated one. Tampa, Fla., Code § 9-107(c) (2022). However, the City must say so in the notice. Section 9-107(c) states that the code enforcement officer "shall notify the violator of the finding" and the secretary is to be notified to schedule the hearing only "upon notifying the violator of a repeat violation." *Id.*

The Code provision relied upon by the City in this case—Section 9-107(e)—is similar to Section 9-107(c). The property owner is not entitled to cure the perceived violation if the code enforcement officer "has reason to believe the violation is irreparable or irreversible." Tampa, Fla., Code § 9-107(e) (2022). Where the opportunity to cure is denied based on a code enforcement officer's belief that the violation is "irreparable or irreversible," Section 9-107(e) mandates that the code enforcement officer make a reasonable effort to notify the owner that the infraction is considered irreparable "and the notice shall so state." *Id.* Reading Section 9-107(e) in the context of the preceding subsections and considering the plain meaning of the words "and the notice shall so state," it is clear that the notice itself should state that the code enforcement officer had reason to believe that the violation is irreparable or irreversible, for the purpose of explaining why an opportunity to cure was not provided pursuant to Section 9-107(b).

A larger fine is attached to violations under Section 9-107(c) or (e). *See* Tampa, Fla., Code § 9-110 (2022). In contrast with a fine of up to $1,000 per day for a standard first violation, the fine for a repeat violation is up to $5,000 per day. *Id.* For an irreparable or irreversible violation, the fine is up to $15,000 per day. *Id.*

This is where the opportunity to defend is important to the due process analysis. It is not that Super Host was given no notice at all. In fact, Super Host received both a Notice of Violation and a Notice of Public Hearing. The issue is that neither of the notices contained the language required by the Code. Because the notices did not say that the code enforcement officer considered the violation to be irreparable, Super Host's counsel came prepared to argue a type of violation that requires an opportunity to cure and carries a fine of no more than $1,000 per day. When Super Host pointed out that the type of notice given required an opportunity to cure, the City announced for the first time that the violation was considered irreparable.

Notably, the idea of the violation being irreparable came from the City Attorney, not the code enforcement officer. After being sworn in and asked why he did not give an opportunity to cure, the code enforcement officer never said that he had a reason to believe the violation was irreparable or irreversible. Instead, he refused to answer and deferred to "the legal department," and the City Attorney stepped in.

Lack of notice deprived Super Host of the opportunity to mount a persuasive defense. For a municipal code violation that carries a fine of no more than $1,000 per day and requires an opportunity to cure, what reasonable lawyer would go out and subpoena the lacrosse coach in Alabama to authenticate her signature on the lease? However, if the City had noticed an irreparable violation, the situation is entirely different. That violation carries a financial penalty up to fifteen times higher for each day that the property was in violation, and there was no argument to be made that the client deserved the opportunity to cure. In that situation, the need for a more forceful evidentiary presentation would be expected and the more costly preparation justified.

In a similar vein, while I appreciate the acknowledgment that the single-family violation was "not clearly noticed as a violation," *see* n.9, *supra*, I disagree with the conclusion that the issue was tried by consent. Failure to object is not a consent to try an unpled theory when the evidence presented was relevant to other issues. *Derouin v. Universal Am. Mortgage Co., LLC*, 254 So. 3d 595, 603 (Fla. 2d DCA 2018). In the context of a proceeding that itself was a due process violation because of deficiencies in the notice, I would not find that Super Host consented to try the single-family violation. Just like the City Attorney's argument that the violation was irreparable, neither the notice of violation nor the notice of hearing mentioned a single-family violation.

II.

After concluding that Super Host was not given fair notice that the violation was considered irreparable—and recognizing that the Code requires this—the majority still upholds the violation. The twist is that the majority finds that the violation was not irreparable; rather, it was "transient."

There are a few problems with this. The most glaring one is that no one has advanced this argument. The City never asserted that the violation was transient. Super Host certainly didn't either. The special magistrate did not find a transient violation. The idea of a transient violation appears for the first time in the majority's analysis. The trouble is that "[a]n appellate court is 'not at liberty to address issues that were not raised by the parties.' Nor may an appellate court 'depart from its dispassionate role and become an advocate by second guessing counsel and advancing for him theories and defenses which counsel either intentionally or unintentionally has chosen not to mention." *Rosier v. State*, 276 So. 3d 403, 406 (Fla. 1st DCA 2019). "'Basic principles of due process'—to say nothing of professionalism and a long appellate tradition—'suggest that courts . . . ought not consider arguments outside the scope of the briefing process.'" *Bainter v. League of Women Voters of Fla.*, 150 So. 3d 1115, 1126 (Fla. 2014).

Raised only in a footnote, the majority justifies its approach under the tipsy coachman doctrine. *See* n.11, *supra*. But this case is a poor candidate for application of that doctrine and even the opinion cited for the proposition—*Robertson v. State*—counsels against its application here. The underlying issue is the deprivation of a constitutional right to due process because Super Host received inadequate notice. Inadequacy in the notice deprived Super Host of a meaningful opportunity to be heard and to defend. *Robertson* disapproved of the application of the tipsy coachman doctrine in a case where inadequate notice of an issue deprived a party of a meaningful opportunity to be heard and defend and prevented the fulsome development of a record. *Robertson*, 829 So. 2d at 906. Specifically, it found that the intermediate appellate court "improperly relied upon the 'tipsy coachman' doctrine where no notice was provided and as a result the defendant never had an opportunity to present evidence or make argument as to the new theory. *Id.* Moreover, the majority does not apply the tipsy coachman doctrine in a manner that actually leads to an affirmance. This case is going back to the special magistrate, because the majority's new theory

relating to transient violations still requires reversal. The reason the entire case cannot be affirmed is that the special magistrate did not find—because the City did not argue—that this violation was transient. The special magistrate found that the violation was irreparable and assessed a fine that the special magistrate found appropriate for an irreparable violation.[14]

One of the first principles of American justice is that our system is adversarial in nature. *See generally United States v. Campbell*, 26 F.4th 860, 910 (11th Cir. 2022) (Newsom, J., dissenting) (discussing the differences between adversarial and inquisitorial systems of justice). Lawyers make arguments, judges make decisions. While from time a superior argument may appear to—for whatever reason—have been left on the table, respect for the lawyers as the masters of the case counsels against a judicial assist. And this case to me represents the easiest situation to justify deciding the case merely on the arguments presented. The beneficiary of the assist is the one who is beyond doubt the most powerful and experienced franchise player on the field—at least as it relates to proceedings on alleged violations of the City of Tampa Code. *Id.* A taxpayer-funded litigant who levied excessive fines on a party that was denied due process because of a sloppy notice is, in my view, a poor candidate for a handout. But in any event, the inherent problem with deciding a case on an issue not briefed or argued by the parties is that it "disort[s] the litigation process." *Id.*

A second problem—which in my view is a predictable consequence of deciding a case on an argument no one made—is that the analysis is incomplete. For example, the majority does not really reconcile Section 9-107 with Section 9-2 or Section 9-3. When interpreting a statute, "it is axiomatic that all parts of a statute must be read together in order to achieve a consistent whole. Where possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with each other." *Brittany's Place Condo. Ass'n v. U.S. Bank, N.A.*, 205 So. 3d 794, 798 (Fla. 2d DCA 2016) (quoting *Knowles v. Beverly Enters.-Fla., Inc.*, 898 So. 2d 1, 5 (Fla. 2004)).

Section 9-107 is the provision of the Code that establishes code enforcement procedures and requires that the property owner be given an opportunity to cure at the time the owner is notified of the violation, unless an enumerated exception applies. And Section 9-107 requires that if an enumerated exception is believed to apply, the notice of violation should say so. Section 9-107 contains no enumerated exception for transient violations.

The majority also fails to reconcile Sections 9-2 and 9-3 with Section 9-110, which sets out the administrative fines available for each type of violation. Tampa, Fla., Code § 9-110 (2022). Section 9-110(d) states that "[a] fine imposed pursuant to this

[14] The majority articulates that this case was not handled as a repeat violation, but I find that more difficult to conclude. For a two-night reservation, the fine was $10,000. A simple first-time violation can be only up to $1,000 per day under the Code. An irreparable violation is up to $15,000 per day. A repeat violation is assessed at up to $5,000 per day. Perhaps the math is coincidental (2 nights x $5,000), but the fine is not clearly consistent with an irreparable violation (2 nights x $15,000).

section shall not exceed one thousand dollars ($1,000) per day per violation for a first violation and shall not exceed five thousand dollars ($5,000) per day per violation for a repeat violation." *Id.* Section 9-110(e) states that if an irreversible violation is found, "a fine not to exceed fifteen thousand dollars ($15,000) per violation may be imposed. *Id.* When the violation is found to "present[] a serious threat to the public health, safety, and welfare" Section 9-110(g) provides that the appropriate city department may make the repairs to bring the property into compliance and charge the violator with the cost of the repairs along with the fine imposed." *Id.* Section 9-110 makes no reference to a transient violation and provides no penalty for it.

The canons of statutory construction are helpful here. The omitted-case canon reflects "[t]he principle that a matter not covered is not covered." Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 93 (2012). In other words, "the statute means what it literally says" and if the drafter of the statute "intended to provide additional exceptions, it would have done so in clear language." *Petteys v. Butler*, 367 F.2d 528, 538 (8th Cir. 1966) (Blackmun, J.) ("My own reaction is that either the statute means what it literally says or that it does not; that if the Congress intended to provide additional exceptions, it would have done so in clear language; and that the recognized purpose and aim of the statute are more consistently and protectively to be served if the statute is construed literally and objectively rather than non-literally and subjectively on a case-by-case application. The latter inevitably is a weakening process.").

Applying the omitted-case canon, the fact that a transient violation is not listed as an enumerated category of violations in Section 9-107 or Section 9-110 is strong evidence that a transient violation is not itself a category of violation. *See* Tampa, Fla., Code § 9-107 (2022). A plausible, plain reading of Sections 9-2 and 9-3 together with Section 9-107 is that the word "transient" does not refer to what the violation *was*; rather, it describes the *way that the violation occurred*.

A first-time code violation could be a transient violation if it "moved from place to place or [stayed] in place for a short time." Tampa, Fla., Code § 9-2 (2022) ("Itinerant or transient in nature violation means that a [sic] violation which may be moved from place to place or which stays in place for a short time."). Likewise, a violation that is repeated, considered by the code enforcement officer to be irreparable or irreversible, or believed by the code enforcement officer to present a serious threat to public health, safety, and welfare could be transient, if the violation moved from place to place or stayed in place for only a short time.

When a violation occurs in a transient manner, Section 9-3 gives the code enforcement officer discretion to determine that, as a practical matter, a violation that already occurred cannot be cured because of the way the violation occurred—meaning that the violation occurred for only a short time or moved from place to place. If the code enforcement officer considered the violation transient, either the civil citation or the notice of hearing must say so. With awareness of the issue, the property owner can be prepared to defend by addressing whether the violation was in fact transient. This

reading is consistent with police power held in check by the Constitution's guarantee of due process.

I cannot join in the conclusion that transient violations are never capable of being cured and can only be punished. *See* n.12, *supra*. It seems to depend on what causes the violation. If the violation is caused by an act or omission of the property owner that the property owner is able and willing to change, then it seems as though even a transient violation could be cured. Operation of an impermissible short-term rental may be an example of this. Assume the short-term rental is the result of the property owner listing the home online as available for rental for periods of time shorter than what is permitted by the Code. And assume the code inspector learns of this through a neighbor who complains that a renter stayed less than the minimum time, and then the inspector goes online and finds the home listing. The code inspector posts the notice of violation, but the renter by that point is gone. The violation occurred in a transient way, but the property owner could decide to cure the violation by altering the listing so that the home is no longer available for a short-term rental. If the owner chooses to allow a second short-term rental and the scenario repeats itself, then the code inspector could issue a notice of repeat violation. The fine is higher, and the Code does not require an opportunity to cure. Both the first and second violations in that example were transient, but the second occurred because the owner chose not to cure.

Now, the purpose of pointing this out is not to state that this is the law as it relates to a transient violation under the Code; there are perhaps other constructions and arguments to consider. Had the City argued in the hearing that the violation was transient and the special magistrate found in its favor on that basis, the briefing on this would surely be well-enough developed that we could make a fair and well-considered judgment as it then would be our role to do. The point is that, relating back to what I view as the due process violation, this concept of a transient violation has no place in today's decision because Super Host did not have fair notice and an opportunity to be heard and defend on that argument any more than it did an irreparable or single-family violation. This is part and parcel of why I would have reversed the special magistrate's order in its entirety, with the instructions previously noted and without any mention of a transient violation.

This case presents an example of varying approaches to statutory construction. For the majority, the Code-drafter's omission of transient violations is viewed as a mistake that the Court can easily rectify by "filling in the procedural gaps" with judicial spackle. I see it differently. First, the matter at hand is substantive and not procedural. The question is whether Super Host has committed a civil wrong and, if so, which wrong was committed. Inventing a new category of wrongs is substantive. Second, I return to the fact that transient violations are not an enumerated type of violation in the Code and the absence of this type of violation in the Code does not create a "gap" that requires filling. As explained above, when I consider the plain and ordinary meaning of the words used in the Code and the various provisions read in relation to one another, the word transient seems to have been chosen by the drafters of the Code as a description of a way a violation can occur, rather than creating a separate category of violations.

Whatever it is that "filling in the procedural gaps" means, fixing or adding to Code provisions and statutes is a role constitutionally denied to judges. Art. 1, § 3, Fla. Const. ("The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.") Although I have the greatest respect for my colleagues in the majority, I cannot join them and for that reason I dissent.

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STR Code Enforcement & Code Issues

RYAN KNIGHT

STR Enforcement

- § 74-4. Enforcement.
  - Violations of this chapter shall be enforced as code violations in accordance with the provisions of Florida Statutes, Chapter 162, and §§ 11-15 through 11-22 of the Town of Melbourne Code of Ordinances
  - Means any violations would go through Code Enforcement Special Magistrate
- Fla. Stat. § 509.032(7)(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.

Code Enforcement Limitations

- Fourth Amendment
  - Guarantees all persons the right to be secure from unreasonable governmental intrusion
- Article I, section 12, Florida Constitution:
  - The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained.
- A local government code inspector is not authorized to enter onto any private, commercial or residential property to assure compliance with or to enforce the various technical codes or to conduct any administrative inspections or searches without the consent of the owner or the operator or occupant of such premises, or without a duly issued search or administrative inspection warrant. *2002 Fla. AG LEXIS 56*

STR Compliance Issues - Parking

- § 74-38
  - (A) All vehicles associated with the vacation rental, including visitors not residing at the vacation rental, must be parked in compliance with §§ 30-41 through 30-48 of the Town of Melbourne Beach Code of Ordinances. All vehicles utilized by the occupants of the vacation rental must be parked within a driveway located on the subject property. There shall be no sidewalk, on street, right-of-way, or grass parking
  - Applies to all vehicles
- Any vehicle not in compliance with §§ 30-41 through 30-48 should be cited
- § 74-39 requires the maximum number of vehicles allowed to park at vacation rental, sketch of the location of the paved off-street parking, and notice that visitors must comply with code to be posted inside vacation rental
  - Who determines maximum # of vehicles?
- Lack of penalties for non-payment
  - Hold on registration (amend code)
  - Amend code to provide for Special Magistrate Hearings instead of courts for parking violations

STR Compliance Issues - Noise

- § 48-1 Unusual and Loud Noise Prohibited
  - (a) It shall be unlawful for any person, firm or corporation to create or assist in creating any unreasonably loud and disturbing noise in the town. Noise of such character, intensity and duration as to be detrimental to the public health, welfare and peace is prohibited.
  - (b)(2) The playing of any radio (except in a motor vehicle as defined in Section 316.003, Fla. Stat.), phonograph, or other musical instrument in a manner or with such volume, particularly during hours between 11:00 p.m. and 7:00 a.m. as to annoy or disturb the quiet, comfort, or repose of any person in any dwelling, hotel or other type of residence.

- § 74-25(B)(1)
  - The responsible party shall be available 24 hours per day, seven days a week, for the purpose of promptly responding to complaints regarding conduct or behavior of vacation rental occupants or alleged violations of these regulations. The responsible party must have authority to immediately address and take affirmative action, within one hour of notice from the town, on violations concerning life-safety, noise, and parking violations. A record shall be kept by the town of the complaint and the responsible party's response, as applicable.

STR Compliance Issues - Noise

- Documentation is key for development of code case
- Pursuant to § 74-25(B)(1) Town is required to document complaint and response
- Usually, these complaints occur during non-business hours and Town staff is unable to document
- Police documentation – if complaint not resolved in one hour as required, owner should be cited

- Newer Technology
  - Noise Sensors
  - https://www.newschannel5.com/news/you-cant-really-get-away-with-this-noise-sensors-aimed-to-prevent-airbnb-parties

STR Compliance Issues - Noise

- City of Hollywood
- Implemented 24/7 hotline and website
- Allows for reporting issues 24 hours a day, 7 days a week
- Once complaint is issued, owner is automatically contacted and must resolve issue
- If no response from owner/manager, the issue is then escalated
- Town must weigh cost/benefit

Code Enforcement – Building a Case

- The public (neighbors) must be willing to assist and provide documentation for code enforcement
- (1) Advertisement
  - Can't rely on advertisement alone (hearsay)
    - While hearsay evidence is admissible in code enforcement proceedings, a magistrate is not allowed to rely solely on hearsay evidence
    - While advertisement may establish intent to rent short term, it does not conclusively establish that a dwelling was actually rented
    - Must be able to introduce non-hearsay evidence
    - Best evidence – photos and testimony from neighbors

Code Enforcement – Building a Case

- (2) Photographs
  - Parking and noise violations likely to occur outside of normal business hours
  - Requires person taking photographs to authenticate and testify, otherwise it is still hearsay
  - Testimony of neighbors – frequency of different groups coming and going, length of stay, description of different vehicles
  - Code Enforcement Official – document different vehicles on 3 separate occasions to show a pattern of short-term rentals
- (3) Documentation
  - Police incident log
  - Log of attempts to notify order

Notice of Violation

- Between a case opening and fines being imposed, Town must be able to prove a violation occurred at least 3 distinct times
  - Section 11-19(d). If the Code Inspector has reason to believe a violation presents a serious threat to the public health, safety and welfare, or if the violation is irreparable or irreversible in nature, the Code Inspector shall make a reasonable effort to notify the violator and may immediately set a hearing before the special magistrate
  - *See* Super Host, LLC v. City of Tampa
  - If the special magistrate finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed $5,000 per violation
- By state law, notice of violation must give a time for cure and Code Enforcement cannot request a hearing unless the violation occurs again after that date allowed for cure
- By state law, magistrate is required to give an opportunity to cure prior to any fines being imposed

Notice of Violation

- Specific code provision must be cited, along with facts giving rise to violation
- List date of compliance in notice
- Confirm receipt (proof of service) on owner, not just tenant via certified mail, return receipt
- Fla. Stat. 162.12 notice requirements (procedural due process)

Fines

- Section 11-21(b)(2) – In determining the amount of the fine, if any, the special magistrate shall consider the following factors:
  - (A) The gravity of the violation;
  - (B) Any actions taken by the violator to correct the violation; and
  - (C) Any previous violations committed by the violator

Conclusion

- Similar issues throughout Florida
  - Town's STR Ordinance is what most municipalities have adopted
  - STR are here to stay thanks to Florida Legislature
- Recommendations
  - Policy for promptly notifying owners of STRs and documentation for use at hearing
  - Limiting number of vehicles at STRs
  - Limiting persons at STRs between hours
  - Establish way for residents to report violations after hours
  - Parking violations to special magistrate instead of court
  - Enforcement, Enforcement, Enforcement

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 280

INTRODUCER: Fiscal Policy Committee and Senator DiCeglie

SUBJECT: Vacation Rentals

DATE: January 19, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Favorable**
2.	Oxamendi	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 280 revises the regulation of vacation rentals. A vacation rental is a unit in a condominium or cooperative, or a single, two, three, or four family house that is rented to guests more than three times a year for periods of less than 30 days or one calendar month, whichever is shorter, or held out as regularly rented to guests. Vacation rentals are licensed by the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (DBPR). Current law does not allow local laws, ordinances, or regulations that prohibit vacation rentals or to regulate the duration or frequency of the rental of vacation rentals. However, this prohibition does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

The bill permits “grandfathered” local laws, ordinances, or regulations adopted on or before June 1, 2011, to be amended to be less restrictive or to comply with local registration requirements. Additionally, a local government that had such a “grandfathered” regulation in effect on June 1, 2011, is authorized by the bill to adopt a new, less restrictive ordinance. The bill does not affect vacation rental ordinances in jurisdictions located in an area of critical state concern. The bill provides that a local law, ordinance, or regulation may restrict the maximum occupancy for rented residential properties if the restriction applies uniformly without regard to whether the residential property is used as a vacation rental.

The bill also preempts the regulation of advertising platforms to the state. An advertising platform is a person, which may be an individual or a corporation, who electronically advertises

a vacation rental to rent for transient occupancy, maintains a marketplace, and a reservation or payment system.

Under the bill, a local government may require vacation rentals to be registered. The bill allows local governments to charge a reasonable fee for registration and to inspect a vacation rental after registration to verify compliance with the Florida Building Code and the Florida Fire Prevention Code.

The bill establishes limits for a local government registration program, including requiring a vacation rental owner to provide proof of state licensure, submit identifying information, obtain any required tax registrations, pay all recorded municipal or county code liens, designate a responsible person who must be available 24 hours a day, seven days a week, to respond to complaints and emergencies, and to state the maximum occupancy for the vacation rental in compliance with the Florida Fire Prevention Code.

The bill permits a local government to:
- Impose a fine on a vacation rental operator of up to $500 for violations of the local registration requirements, and to file and foreclose on a lien based on the fine if the property is not subject to homestead protections against foreclosure.
- Suspend a registration for violations of an ordinance that does not apply solely to vacation rentals and the violations occur on and are related to the vacation rental property, including suspensions of up to:
  - 30 days based on five or more violations on five separate days during a 60-day period;
  - 60 days based on one or more violations on five separate days during a 30-day period; or
  - 90 days based on one or more violations after two prior suspensions.

The bill also:
- Requires that local governments give the vacation rental operator 15 days to cure a violation before issuing a fine;
- Provides for the payment of attorney fees, costs, and damages to the prevailing party when a vacation rental operator appeals a denial, suspension, or revocation of a vacation rental registration; and
- Allows local governments to fine a vacation rental operator for failure to provide the local vacation rental registration number to the Division of Hotels and Restaurants (division).

The bill also authorizes a local government to revoke or refuse to renew a registration if:
- A vacation rental registration has been suspended three times;
- There is an unsatisfied recorded municipal or county lien, provided the vacation rental owner is given at least 60 days before termination of the registration to satisfy the lien; and
- The vacation rental premises and owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

The bill authorizes the division to revoke, refuse to issue or renew, or suspend a vacation rental license for a period of not more than 30 days if:
- Operation of the vacation rental violates a condominium, cooperative, or homeowners' association lease or property restriction as determined by a final order or judgment;

- The local registration is suspended or revoked; or
- The premises or its owner is the subject of an order or judgment directing the termination of the premises' use as a vacation rental.

Effective January 1, 2025, the bill authorizes the division to issue temporary licenses to permit the operation of a vacation rental while the license application is pending. It also requires the division to assign a unique identifier for each individual vacation rental dwelling or unit.

The bill requires the owner or operator of a vacation rental offered for transient occupancy through an advertising platform to include the property's vacation rental license number with the associated unique identifier issued by the division and, if applicable, the local registration number on the vacation rental's advertisement, and attest that, to the best of their knowledge, those numbers are current, valid, and accurate. The vacation rental property owner or operator must display the local registration and licensure information inside the vacation rental property.

The bill requires an advertising platform to display the vacation rental license number with the associated unique identifier and, if applicable, the local registration number of each property that advertises on its platform. Effective July 1, 2026, an advertising platform must:

- Verify the validity of the vacation rental's license number with the unique identifier and local registration number, if applicable, before it publishes the advertisement;
- Not advertise or license a vacation rental without a valid license number with a unique identifier and, if applicable, the local registration number;
- Remove from public view any advertisement or listing that fails to display a valid vacation rental license number with a unique identifier and, if applicable, the local registration number; and
- Notify the division within 15 days after any advertisement or listing fails to display a valid license number with a unique identifier and, if applicable, local registration number.

To facilitate the required verification of vacation rental licensure and registration, the division must create and maintain a vacation rental license information system. Additionally, the division's vacation rental information system must permit:

- Local governments to notify the division of a termination, failure to renew, or period of suspension of a local registration;
- Local governments to verify the license and local registration status of a vacation rental; and
- The registered user to subscribe to receive notification of changes to the license or registration of a vacation rental.

The bill requires advertising platforms to collect and remit any taxes imposed under chs. 125, 205, and 212, F.S., that result from payment for the rental of a vacation rental property on its platform. The bill allows platforms to exclude service fees from the taxable amount if the platforms do not own, operate, or manage the vacation rental. It allows the division to take enforcement action for noncompliance.

The bill provides that this act will not supersede any current or former governing document for a condominium, cooperative, or homeowners' association.

The bill provides an appropriation. The bill has a fiscal impact. See Section V. Fiscal Impact Statement.

The Revenue Estimating Conference has not determined the fiscal impact of this bill.

Except as otherwise expressly provided in the bill, the bill takes effect July 1, 2024.

II. Present Situation:

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (DBPR) is the state agency charged with enforcing the provisions of ch. 509, F.S., relating to the regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare.

The term "public lodging establishments" includes transient and non-transient public lodging establishments.[1] The principal differences between transient and non-transient public lodging establishments are the number of times that the establishments are rented in a calendar year and the duration of the rentals.

A "transient public lodging establishment" is defined in s. 509.013(4)(a)1., F.S., as:

> …any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings *which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month*, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests. (emphasis added)

A "non-transient public lodging establishment" is defined in s. 509.013(4)(a)2., F.S., as:

> …any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings *which is rented to guests for periods of at least 30 days or 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 of at least 30 days or 1 calendar month. (emphasis added)

Section 509.013(4)(b), F.S., exempts the following types of establishments from the definition of "public lodging establishment":

- Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors;
- Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place regulated under s. 381.0072, F.S.;

[1] Section 509.013(4)(a), F.S.

- Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients;
- Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or one calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than one calendar month, provided that no more than four rental units within a single complex of buildings are available for rent;
- Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008 - 381.00895, F.S.;
- Any establishment inspected by the Department of Health and regulated by ch. 513 F.S.;
- Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public;
- Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department's behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement; and
- Any rooming house, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental, non-transient apartment, bed and breakfast inn, or transient apartment under s. 509.242, F.S.

A public lodging establishment is classified as a hotel, motel, vacation rental, non-transient apartment, transient apartment, bed and breakfast inn, or timeshare project if the establishment satisfies specified criteria.[2]

A "vacation rental" is defined in s. 509.242(1)(c), F.S., as:

> …any unit or group of units in a condominium, cooperative, or timeshare plan 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 is not a timeshare project.

Section 509.013(2), F.S., defines the term "operator" to mean the owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of a public lodging establishment or public food service establishment.

[2] Section 509.242(1), F.S.

The DBPR licenses vacation rentals as condominiums, dwellings, or timeshare projects.[3] The division may issue a vacation rental license for "a single-family house, a townhouse, or a unit or group of units in a duplex, triplex, quad plex, or other dwelling unit that has four or less units collectively."[4] The division does not license or regulate the rental of individual rooms within a dwelling unit based on the rooming house and boardinghouse exclusion from the definition of public lodging establishment in s. 509.013(4)(b)9., F.S.[5]

The 63,690 public lodging establishment licenses issued by the division are distributed as follows:[6]

- Hotels – 2,382 licenses;
- Motels – 2,353 licenses;
- Non-transient apartments – 18,480 licenses;
- Transient apartments – 936 licenses;
- Bed and Breakfast Inns – 268 licenses;
- Vacation rental condominiums – 13,434 licenses;
- Vacation rental dwellings – 31, 703 licenses; and
- Vacation rental timeshare projects – 48 licenses.

Inspections of Vacation Rentals

The division must inspect each licensed public lodging establishment at least biannually, but must inspect transient and non-transient apartments at least annually. However, the division is not required to inspect vacation rentals, but vacation rentals must be available for inspection upon a request to the division.[7] The division conducts inspections of vacation rentals in response to a consumer complaint. In Fiscal Year 2022-2023, the division received 356 consumer complaints regarding vacation rentals. In response to the complaints, the division's inspection confirmed a violation for 45 of the complaints.[8]

The division's inspection of vacation rentals includes matters of safety (for example, fire hazards, smoke detectors, and boiler safety), sanitation (for example, safe water sources, bedding, and vermin control), consumer protection (for example, unethical business practices, compliance with the Florida Clean Air Act, and maintenance of a guest register), and other

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[3] Fla. Admin. Code R. 61C-1.002(4)(a)1.

[4] The division further classifies a vacation rental license as a single, group, or collective license. *See* Fla. Admin. Code R. 61C-1.002(4)(a)1. A single license may include one single-family house or townhouse, or a unit or group of units within a single building that are owned and operated by the same individual person or entity. A group license is a license issued by the division to a licensed agent to cover all units within a building or group of buildings in a single complex. A collective license is a license issued by the division to a licensed agent who represents a collective group of houses or units found on separate locations not to exceed 75 houses or units per license.

[5] *See* s. 509.242(1)(c), F.S., defining the term "vacation rental."

[6] Department of Business and Professional Regulation, Division of Hotels and Restaurants Annual Report for FY 2022-2023 at page 8, available at http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2022_23.pdf (last visited Dec. 4, 2023). The total number of vacation rental licenses for each classification includes single licenses and group and collective licenses that cover multiple condominium units, dwellings, and timeshare projects under a single license.

[7] Section 509.032(2)(a), F.S.

[8] *Supra* at note 6 on page 21.

general safety and regulatory matters.[9] The division must notify the local fire safety authority or the State Fire Marshal of any readily observable violation of a rule adopted under ch. 633, F.S.,[10] which relates to a public lodging establishment.[11] The rules of the State Fire Marshall provide fire safety standards for transient public lodging establishments, including occupancy limits for one and two family dwellings.[12]

Additionally, an applicant for a vacation rental license is required to submit with the license application a signed certificate evidencing the inspection of all balconies, platforms, stairways, railings, and railways, from a person competent to conduct such inspections.[13]

Preemption

Section 509.032(7)(a), F.S., provides that "the regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state."

Current law does not preempt the authority of a local government or a local enforcement district to conduct inspections of public lodging establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206, F.S.[14]

Section 509.032(7)(b), F.S., does not allow local laws, ordinances, or regulations that prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. However, this prohibition does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

Section 509.032(7)(c), F.S., provides that the prohibition in s. 509.032(7)(b), F.S., does not apply to local laws, ordinances, or regulations exclusively relating to property valuation as a criterion for vacation rental if the law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.[15]

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[9] *See* ss. 509.211 and 509.221, F.S., for the safety and sanitary regulations, respectively. *See also* Fla. Admin. Code R. 61C-1.002; *Lodging Inspection Report, DBPR Form HR 5022-014*, which details the safety and sanitation matters addressed in the course of an inspection. A copy of the Lodging Inspection Report is available at: https://www.flrules.org/Gateway/reference.asp?No=Ref-07062 (last visited Dec. 4, 2023).
[10] Chapter 633, F.S., relates to fire prevention and control, including the duties of the State Fire Marshal and the adoption of the Florida Fire Prevention Code.
[11] Section 509.032(2)(d), F.S.
[12] *See* Fla. Admin. Code R. 69A-43.018, relating to one and two family dwellings, recreational vehicles and mobile homes licensed as public lodging establishments.
[13] *See* ss. 509.211(3) and 509.2112, F.S., and form *DBPR HR-7020, Division of Hotels and Restaurants Certificate of Balcony Inspection*, available at: http://www.myfloridalicense.com/dbpr/hr/forms/documents/application_packet_for_vacation_rental_license.pdf (last visited Dec. 4, 2023).
[14] Section 509.032(7)(a), F.S.
[15] *See* s. 380.031(18), F.S., which provides that the state land planning agency is the Department of Economic Opportunity. *See also* s. 380.05, F.S., relating to the designation of areas of critical state concern. Chapter 2023-173, Laws of Fla., changed the name of the Department of Economic Opportunity to the Department of Commerce and the name change will be reflected in the 2024 Florida Statutes.

Legislative History

In 2011, the Legislature preempted certain vacation rental regulation to the state. The preemption prevented local governments from enacting any law, ordinance, or regulation that:
- Restricted the use of vacation rentals;
- Prohibited vacation rentals; or
- Regulated vacation rentals based solely on their classification, use, or occupancy.[16]

This legislation grandfathered any local law, ordinance, or regulation that was enacted by a local government on or before June 1, 2011.[17]

In 2014, the Legislature revised the preemption to its current form with an effective date of July 1, 2014.[18] Chapter 2014-71, Laws of Fla., amended s. 509.032(7)(b), F.S., and repealed the portions of the preemption of local laws, ordinances, and regulations which prohibited "restrict[ing] the use of vacation rentals" and which prohibited regulating vacation rentals "based solely on their classification, use, or occupancy."[19]

Attorney General Opinions

The office of the Attorney General issued an Informal Legal Opinion on October 22, 2013, regarding whether Flagler County could intercede and stop vacation rental operations in private homes that were zoned, prior to June 1, 2011, for single-family residential use.[20] According to the opinion, "due to an increase in the number of homes being used as vacation rentals in Flagler County, many permanent residents in neighborhoods with vacation rentals have raised concerns about the negative effects such rentals have on their quality of life and the character of their neighborhood." Flagler County had no regulation governing vacation rentals before the grandfather date of June 1, 2011, established in s. 509.032(7)(b), F.S. The Attorney General concluded that the county's local zoning ordinance for single-family homes that predated June 1, 2011, did not restrict the rental of such property as a vacation rental and that the zoning ordinances could not now be interpreted to restrict vacation rentals.
The Attorney General also issued an opinion on November 13, 2014, to the City of Wilton Manors, concluding that s. 509.032(7)(b), F.S., does not permit the city to regulate the location of vacation rentals through zoning, and the city may not prohibit vacation rentals that fail to comply with the registration and licensing requirements in s. 509.241, F.S., which requires public lodging establishments to obtain a license from the division.[21]

In addition, the Attorney General issued an advisory opinion on October 4, 2016, addressing whether a municipality could limit the spacing and concentration of vacation rentals through a

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[16] Chapter 2011-119, Laws of Fla.
[17] *Id.*
[18] Chapter 2014-71, Laws of Fla. (codified in s. 509.032(7)(b), F.S.).
[19] *Id.*
[20] Florida Attorney General, *Informal Legal Opinion to Mr. Albert Hadeed, Flagler County Attorney, regarding Vacation Rental Operation-Local Ordinances,* Oct. 22, 2013, available at https://www.myfloridalegal.com/ag-opinions/vacation-rental-operations-local-ordinances (last visited Dec. 4, 2023).
[21] Op. Att'y Gen. Fla. 2014-09, *Vacation Rentals - Municipalities - Land Use* (November 12, 2014), available at https://www.myfloridalegal.com/ag-opinions/vacation-rentals-municipalities-land-use (last visited Dec. 4, 2023).

proposed zoning ordinance.[22] The Attorney General concluded that the preemption in s. 509.032, F.S., allows local governments some regulation of vacation rentals, but prevents local governments from prohibiting vacation rentals. Consequently, the Attorney General noted that a municipality may not impose spacing or proportional regulations that would have the effect of preventing eligible housing from being used as a vacation rental.[23]

The Attorney General also opined that amending an ordinance that was enacted prior to June 1, 2011 will not invalidate the grandfather protection for the parts of the ordinance that are reenacted.[24] However, the new provisions would be preempted by state law if an ordinance was revised in a manner that would regulate the duration or frequency of rental of vacation rentals, even when the new regulation would be considered "less restrictive" than the prior local law.

Public Lodging Non-Discrimination Law

Section 509.092, F.S., prohibits an operator of a public lodging establishment from denying service or offering lesser quality accommodations to a person based upon his or her race, creed, color, sex, pregnancy, physical disability, or national origin. An aggrieved person may file a complaint pursuant to s. 760.11, F.S., of the Florida Civil Rights Act. Such complaints are mediated, investigated, and determined by the Florida Commission on Human Relations.[25]

III. Effect of Proposed Changes:

Preemptions

The bill amends s. 509.032(7), F.S., to preempt the regulation of advertising platforms to the state. The bill also amends s. 509.032(7), F.S., to preempt the licensing of vacation rentals to the state.

The bill does not affect the "grandfather" provision in s. 509.032(7)(b), F.S., which does not allow local laws, ordinances, or regulations prohibiting vacation rentals or regulating the duration or frequency of rental of vacation rentals. Under the bill, a "grandfathered" local law, ordinance, or regulation adopted on or before June 1, 2011, may be amended to be less restrictive or to comply with local registration requirements. Additionally, the bill permits a local government that had a "grandfathered" regulation in effect on June 1, 2011, to pass a new, less restrictive ordinance that would be "grandfathered" as well.

The bill also exempts local laws, ordinances, and regulations that are "grandfathered" under s. 509.032(7)(b), F.S., from the local registration requirements in s. 509.032(8), F.S.

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[22] Op. Att'y Gen. Fla. 2016-12, *Municipalities - Vacation Rentals – Preemption – Zoning* (Oct. 4, 2016), available at https://www.myfloridalegal.com/ag-opinions/municipalities-vacation-rentals-preemption-zoning (last visited Dec. 4, 2023).
[23] *Id.*
[24] Op. Att'y Gen. Fla. 2019-07*, Vacation rentals, municipalities, grandfather provisions* (August 16, 2019) available at https://www.myfloridalegal.com/ag-opinions/vacation-rentals-municipalities-grandfather-provision (last visited Dec. 4, 2023).
[25] *See* Florida Commission on Human Relations, *Public Accommodations*, available at https://fchr.myflorida.com/public-accommodations (last visited Dec. 4, 2023).

Definition of "Advertising Platform"

The bill creates s. 509.013(17), F.S., to define the term "advertising platform." Under the bill, an advertising platform is a person[26] who:

- Provides an online application, software, website, or system through which a vacation rental located in this state is advertised or held out to the public as available to rent for transient occupancy;
- Provides or maintains a marketplace for the renting by transient occupancy of a vacation rental; and
- Provides a reservation or payment system that facilitates a transaction for the renting by transient occupancy of a vacation rental and for which the person collects or receives, directly or indirectly, a fee in connection with the reservation or payment service provided for such transaction.

Tax Collection and Reporting Requirements

The bill also amends s. 212.03(3), F.S., to require advertising platforms to collect and report taxes imposed under ch. 212, F.S. The bill:

- Provides that the taxes an advertising platform must collect and remit are based on the total rental amount charged by the owner or operator for use of the vacation rental.
- Excludes service fees from the calculation of taxes remitted by an advertising platform to the Department of Revenue (DOR), unless the advertising platform owns, is related to, operates, or manages the vacation rental.
- Requires the DOR and local government jurisdictions to allow advertising platforms to register, collect, and remit such taxes.

The bill authorizes the DOR to adopt emergency rules, which are effective for six months and may be renewed until permanent rules are adopted. This emergency rulemaking authority expires on January 1, 2026.

The bill creates s. 509.243(4), F.S., to require advertising platforms to collect and remit taxes due under ss. 125.0104,[27] 125.0108,[28] 205.044,[29] 212.03,[30] 212.0305,[31] and 212.055, F.S.,[32] resulting from the reservation of a vacation rental property and payment therefor through an advertising platform.

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[26] Section 1.01(3), F.S., defines the term "person" to include "individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations."
[27] Section 125.0104, F.S., relates to the local option tourist development tax.
[28] Section 125.0108, F.S., relates to the tourist impact tax in areas within a county designated as an area of critical state concern.
[29] Section 205.044, F.S., relates to the merchant business tax measured by gross receipts.
[30] Section 212.03, F.S., relates to the transient rentals tax.
[31] Section 212.0305, F.S., relates to convention development taxes.
[32] Section 212.055, F.S., relates to discretionary sales taxes.

Local Registration of Vacation Rentals

The bill creates s. 509.032(8), F.S., to permit local governments to require vacation rentals to register under a local registration program.

The bill provides that a local government is not prohibited from adopting a law, ordinance, or regulation if it is uniformly applied without regard to whether the residential property is used as a vacation rental.

Application Process

The bill allows local governments to charge a reasonable fee[33] for the local registration and a reasonable fee to inspect a vacation rental after registration to verify compliance with the Florida Building Code and the Florida Fire Prevention Code.

The bill establishes limits for a local government registration program. A local registration program may only require an owner or operator of a vacation rental to:

- Submit identifying information;
- Provide proof of a vacation rental license with the unique identifier issued by the division;
- Obtain all required tax registrations, receipts, or certificates issued by the Department of Revenue, a county, or a municipal government;
- Update required information on a continuing basis to be current;
- Designate and maintain a responsible person who is capable of responding to complaints and emergencies by telephone at a provided telephone number 24 hour a day, 7 days a week, and receiving legal notices of complaints on behalf of the vacation rental operator;
- State the maximum occupancy for the vacation rental in compliance with the Florida Fire Prevention Code;[34] and
- Pay in full all recorded municipal or county code liens.

Additionally, the bill requires local governments to review a registration application for completeness and accept the registration or issue a written notice specifying deficient areas within 15 days of receipt of an application. The vacation rental owner or operator may agree to an extension of this time period. Such notice may be provided by mail or electronically.

If a local government denies an application, the written notice of denial may be sent by United States mail or electronically. The notice must state with particularity the factual reasons for the denial and the applicable portions of an ordinance, rule, statute, or other legal authority for the

[33] Sections 125.66 and 166.041, F.S., requires counties and municipalities, respectively, before enactment of a proposed ordinance to prepare a business impact estimate that includes an identification of any new charge or fee on businesses subject to the proposed ordinance, or for which businesses will be financially responsible, and an estimate of the municipality's regulatory costs, including an estimate of revenues from any new charges or fees that will be imposed on businesses to cover such costs.

[34] Fla. Admin. Code R. 69A-43.018, relating to the uniform fire safety standards for transient public lodging establishments, timeshare plans, and timeshare unit facilities, provides that the maximum occupancy load permitted for one and two family dwellings and mobile homes licensed as public lodging establishments is at 150 square feet gross floor area per person.

denial. A local government cannot deny a registration application if the applicant cures the identified deficiency.

Upon the acceptance of a registration application, the local government must assign a unique registration number to the vacation rental or other indicia of registration and provide such registration number or other indicia of registration to the owner or operator of the vacation rental in writing or electronically.

If a local government fails to accept or deny the registrations within the provided timeframes, the application is deemed accepted.

Within five days of receipt of the vacation rental registration number, the vacation rental operator must provide the vacation rental registration to the division.

Enforcement and Remedies

Fines Imposed by Local Governments

Under the bill, a local government may fine a vacation rental operator up to $500 for failing to continue to meet the registration requirements, failing to provide the local registration number to the division, and failing to register the vacation rental with the local government.[35] Local governments must give the vacation rental operator 15 days to cure a violation before issuing a fine. The fine must be recorded in the public records. The bill permits the local governments to file a lien on the real property on which the violation occurred. The local governments may foreclose on a lien based on the fine to recover a money judgment in the amount of the lien if the lien remain unpaid for three or more months after it is filed and the property is not subject to homestead protection against foreclosure.[36]

Registration Suspensions by Local Governments

The bill authorizes a local government to suspend a registration for material violations of an ordinance that does not apply solely to vacation rentals, and the violations occur on and are related to the vacation rental property. The local law, ordinance, or regulation may not solely apply to vacation rentals, and the violation must be directly related to the owner's vacation rental premises. The finding of a material violation must be made by the code enforcement board or a special magistrate.

[35] Section 162.09(2), F.S., permits code enforcement boards or special magistrates to impose fines not to exceed $250 per day for a first violation and not to exceed $500 per day for a repeat violation. However, if the code enforcement board or special magistrate finds there is irreparable or irreversible harm caused by the code violation, the fine may not exceed $1,000 per day per violation for a first violation, $5,000 per day per violation for a repeat violation, and up to $15,000 per violation. Moreover, a county or a municipality with a population equal to or greater than 50,000 may adopt, by a vote of at least a majority plus one of the entire governing body of the county or municipality, an ordinance that gives code enforcement boards or special magistrates, or both, authority to impose fines not exceed to $1,000 per day per violation for a first violation, $5,000 per day per violation for a repeat violation, and up to $15,000 per violation if the code enforcement board or special magistrate finds the violation to be irreparable or irreversible in nature.

[36] Section 162.09(3), F.S., provides a comparable authority to local governments to file liens and foreclose on liens based on unpaid fines.

Upon a finding of a material violation, the code enforcement board or special magistrate may recommend to the local government that the operation of the vacation rental be suspended up to:

- 30 days based on one or more violations on five separate days during a 60-day period;
- 60 days based on one or more violations on five separate days during a 30-day period; and
- 90 days based on one or more violations after two prior suspensions.

The bill requires local governments to give notice of a suspension to the operator of a vacation rental within five days after the suspension. The notice must include the start date of the suspension, which must be at least 21 days after the notice is sent to the operator and the division.

Beginning January 1, 2026, a local government must use the vacation rental information system described in s. 509.244, F.S., which is created by the bill, to provide the notice of suspension of a vacation rental registration to the division.

Registration Revocations by Local Governments

Under the bill, a local government may revoke or refuse to renew a vacation rental registration if:

- The owner's registration has been suspended three times;
- There is an unsatisfied recorded municipal lien or county lien on the real property of the vacation rental, provided local governments give a vacation rental owner at least 60 days to satisfy a recorded municipal or county code lien before terminating a local registration because of the unsatisfied lien; or
- The premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

The bill uses interchangeably the terms "revocation" and "termination."

The bill also requires local governments to give notice of a termination or nonrenewal to the operator of a vacation rental within five days after the termination or nonrenewal. The notice must include the start date of the termination or nonrenewal, which must be at least 21 days after the notice is sent to the operator and the division. Beginning January 1, 2026, a local government must use the vacation rental information system described in s. 509.244, F.S., which is created by the bill, to provide the notice of termination or nonrenewal of a vacation rental registration to the division.

Appeals

Under the bill, a vacation rental owner may appeal a denial, suspension, termination, or nonrenewal of a vacation rental registration to the circuit court. The appeal must be filed within 30 days after the issuance of the denial, suspension, or termination. The bill provides that the court may assess and award reasonable attorney fees and costs and damages to the prevailing party in the appeal.[37]

[37] Section 162.11, F.S., provides for the appeal of a final administrative order of a local government enforcement board to the circuit court. This provision does not provide for the awarding of attorney fees and costs to the prevailing party.

Regulation of Vacation Rentals by the Division

Licensing

Effective January 1, 2025, the bill amends ss. 509.241(2) and (3), F.S., relating to the license application process for vacation rentals, to:

- Authorize the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (DBPR) upon receiving an application for a vacation rental license to grant a temporary license to permit the operation of the vacation rental while the license application is pending and to post the information required under s. 509.243(1)(c), F.S.
  - The temporary license automatically expires upon final agency action regarding the license application.
- Require any license issued by the division to be displayed conspicuously to the public inside the licensed establishment, instead of "in the office or lobby."
- Require the owner or operator of a vacation rental offered for transient occupancy through an advertising platform to display the vacation rental local registration number, if applicable.
- Require the licensee or licensed agent managing a vacation rental to submit to the division, through the division's online system, any applicable local vacation rental registration number within five days after registration.
- Require the division to assign a unique identifier on each vacation rental license it issues which identifies each individual vacation rental dwelling or unit.

Suspensions and Revocations of Vacation Rental Licensees

The bill amends s. 509.261, F.S., to authorize the division to revoke, refuse to issue or renew, or suspend for a period of not more than 30 days a vacation rental license when:

- The operation of the subject premises violates the terms of an applicable lease or property restriction, including any property restriction adopted pursuant to chs. 718, 719, or 720, F.S., as determined by a final order of a court or an arbitrator's written decision;[38]
- The registration of the vacation rental is suspended or revoked by a local government as provided in s. 509.032(8); or
- The premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

When revoking, suspending, or refusing to renew a vacation rental license, the division must specify the license number with the associated unique identifier of the vacation rental dwelling or unit that has been suspended, revoked or not renewed. The division must also input such status into the vacation rental information system described in s. 509.244, F.S.

The bill requires that any suspension of a vacation rental license based on the suspension of a local registration must run concurrently with the local registration suspension.

[38] Chapters 718, 719, or 720, F.S., relate to the regulation and governance of condominium, cooperative, and homeowners' associations, respectively.

Requirements for Advertising Platforms

Effective January 1, 2025, the bill creates s. 509.243, F.S., to provide requirements for an advertising platform, including tax collection and remittance requirements. Under the bill, an advertising platform must:

- Require that a person who places an advertisement for the rental of a vacation rental to:
  - Include the vacation rental license number with the associated unique identifier and, if applicable, the local registration number; and
  - Attest to the best of the person's knowledge that the license number and the local registration number, if applicable, for the vacation rental property are current and valid and that all related information is accurately stated in the advertisement.
- Display the vacation rental license number with the associated unique identifier and, if applicable, the local registration number.
- Adopt an anti-discrimination plan and inform its users of the public lodging discrimination prohibition found in s. 509.092, F.S.

Effective January 1, 2026, the advertising platforms shall:

- Use the vacation rental information system described in s. 509.244, F.S., to verify the vacation rental license number with the associated unique identifier and, if applicable, the local registration number.
- Not advertise or list a vacation rental that fails to provide a valid state license number with the unique identifier and, if applicable, a local registration number as indicated on the division's vacation rental information system;
- Remove from public view an advertisement or listing from its online application, software, website, or system within 15 business days after notification that a vacation rental license or, if applicable, a local registration:
  - Has been suspended, revoked, or not renewed; or
  - Fails to display a valid license number with the associated unique identifier and, if applicable, the local registration number; and
- Notify the division within 15 days after any advertisement or listing fails to display a valid license number with a unique identifier and, if applicable, local registration number.

The bill requires advertising platforms to collect and remit taxes due under ss. 125.0104,[39] 125.0108,[40] 205.044,[41] 212.03,[42] 212.0305,[43] and 212.055, F.S.,[44] resulting from the reservation of a vacation rental property and payment therefor through an advertising platform.

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[39] Section 125.0104, F.S., relates to the local option tourist development tax.
[40] Section 125.0108, F.S., relates to the tourist impact tax in areas within a county designated as an area of critical state concern.
[41] Section 205.044, F.S., relates to the merchant business tax measured by gross receipts.
[42] Section 212.03, F.S., relates to the transient rentals tax.
[43] Section 212.0305, F.S., relates to convention development taxes.
[44] Section 212.055, F.S., relates to discretionary sales taxes.

The bill also:

- Provides processes for the division to issue a cease and desist order to any person who violates ch. 509, F.S.
- Authorizes the division to seek an injunction or a writ of mandamus to enforce a cease and desist order.
- Provides that, if the division is required to seek enforcement of the notice for a penalty pursuant to s. 120.69, F.S., it is entitled to collect its attorney fees and costs, together with any cost of collection.
- Authorizes the division to fine an advertising platform an amount not to exceed $1,000 per offense for a violation of the provisions in the bill or rules of the division.
- Provides that the advertising platform requirements in the bill do not create a private right of action against advertising platforms.

Vacation Rental Information System

The bill creates s. 509.244, F.S., to require the division to create and maintain, by July 1, 2025, a vacation rental information system readily accessible through an application program interface to permit:

- Licensees and advertising platforms to promptly comply with ch. 509, F.S., relating in pertinent part to public lodging establishments;
- Vacation rental advertisers to verify the vacation rental license number with the associated unique identifier, the applicable local registration number, and the license or registration status of the vacation rental;
- Local governments to notify the division of a termination, failure to renew, or period of suspension of a local registration;
- Local governments to verify the license and local registration status of a vacation rental; and
- The registered user to subscribe to receive notification of changes to the license or registration of a vacation rental.

Community Associations

The bill provides that the application of vacation rental provisions created by the bill do not supersede any current or future declaration or declaration of condominium adopted pursuant to ch. 718, F.S., cooperative documents adopted pursuant to ch. 719, F.S., or declaration of covenants or declaration for a homeowners' association adopted pursuant to ch. 720, F.S.

Appropriation

The bill provides an appropriation for the 2024-2025 fiscal year, of $327,170 in recurring funds and $53,645 in nonrecurring funds from the Hotel and Restaurant Trust Fund and $645,202 in recurring funds and $3,295,884 in nonrecurring funds from the Administrative Trust Fund are appropriated to the Department of Business and Professional Regulation, and nine full-time equivalent positions with a total associated salary rate of 513,417 are authorized, for the purposes of implementing the provisions in the bill.

Effective Date

Except as otherwise expressly provided in the bill, the bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, Section 19 of the Florida Constitution requires a "state tax or fee imposed, authorized, or raised under this section must be contained in a separate bill that contains no other subject." A "fee" is defined by the Florida Constitution to mean "any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service."

Article VII, Section 19 of the Florida Constitution also requires that a tax or fee raised by the Legislature must be approved by two-thirds of the membership of each house of the Legislature.

The bill does not impose or authorize a state tax or fee. The bill provides that a local government may not require a registration fee of more than $200. Under the bill, a local government is not required to charge a registration fee.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not determined the fiscal impact of this bill.

B. Private Sector Impact:

Indeterminate. Vacation rental owners may incur local registration costs of up to $150 and registration renewal fees of up to $50 if the local government in which the vacation

rental is located adopts an ordinance, law, or regulation consistent with the provisions of this bill.

C. Government Sector Impact:

The bill provides an appropriation for the 2024-2025 fiscal year, of $327,170 in recurring funds and $53,645 in nonrecurring funds from the Hotel and Restaurant Trust Fund and $645,202 in recurring funds and $3,295,884 in nonrecurring funds from the Administrative Trust Fund are appropriated to the Department of Business and Professional Regulation, and nine full-time equivalent positions with a total associated salary rate of 513,417 are authorized, for the purposes of implementing the provisions in the bill.

The Department of Business and Professional Regulation (department) anticipates an indeterminate increase in licensing revenue, but does not know the number of rental advertisements that are not licensed but require a license. It also anticipates an indeterminate increase in fines due to noncompliance.[45]

The division states that the total number of vacation rental complaints it has received has increased more than 42 percent since Fiscal Year (FY) 2018-2019 with a record high of 1,391 complaints in in FY 2019-2020. Consequently, it anticipates an increased number of based on the requirements of the bill, including a large, indeterminate influx of complaints from local jurisdictions, tax collectors, vacation rental guests, license holders, and concerned homeowners.[46]

The department anticipates a total fiscal impact of $4,318,901 ($972,371 recurring and $3,346,529 nonrecurring). The fiscal impact is predominantly due to the creation of the vacation rental information system required under the bill. The anticipated cost for implementing the new system is $3.25 million, with annual recurring license and maintenance costs of $150,000, which may increase over time based on the consumer product index or a negotiated percentage. The department would also need an additional nine full time employees.[47]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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[45] See Department of Business and Professional Regulation, 2023 Agency Legislative Bill Analysis for SB 280, pp. 7 and 8 (Dec. 1, 2023) (on file with the Senate Fiscal Policy Committee).
[46] *Id.* at 9.
[47] *Id.* at 8.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 159.27, 212.03, 212.08, 316.1955, 404.056, 477.0135, 509.013, 509.032, 509.221, 509.241, 509.261, 553.5041, 559.955, 561.20, 705.17, 705.185, 717.1355, and 877.24.

This bill creates the following sections of the Florida Statutes: 509.243 and 509.244.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Fiscal Policy on January 18, 2024:
The committee substitute makes following substantive revisions to the bill:

- Revises the fee for a local registration from $150 per unit to a reasonable fee per unit;
- Increases the fine a local government may impose from $300 to $500 per violation;
- Allows a vacation rental operator a 15-day period to cure before a local government may issue a fine for a violation;
- Revised the requirement to state the maximum occupancy in a vacation rental application to include compliance with the Florida Fire Prevention Code;
- Provides for the payment of attorney fees, costs, and damages to the prevailing party when a vacation rental operator appeals a denial, suspension, or revocation of a vacation rental registration;
- Allows local governments to fine a vacation rental operator for failure to provide the local vacation rental license number to the Division of Hotels and Restaurants (division);
- Authorizes the division to suspend a vacation rental license for the same period as any local suspension of the vacation rental registration;
- Prohibits advertising platforms from advertising or listing a vacation rental that fails to provide a valid state license number with the unique identifier and, if applicable, a local registration number as indicated on the division's vacation rental information system;
- Requires advertising platforms to notify the division within 15 days after any advertisement or listing fails to display a valid license number with a unique identifier and local registration number, if applicable; and
- Provides an appropriation.

B. Amendments:

None.