



2018

Legislative Issue Briefs



Short-Term Rentals

Priority Statement:

The Florida League of Cities SUPPORTS legislation that restores local zoning authority with respect to short-term rental properties thereby preserving the integrity of Florida's neighborhoods and communities. The Florida League of Cities OPPOSES legislation that preempts municipal authority as it relates to the regulation of short-term vacation rental properties.

Background:

In 2011, the Florida Legislature prohibited cities from regulating short-term vacation rentals. A short-term vacation rental is defined as a property that is rented more than three times a year for less than 30 days at a time. The legislation passed in 2011 included a provision that "grandfathered" any ordinance regulating short-term rentals prior to June 1, 2011. Since that time, a number of cities, both "grandfathered" cities and those that did not have an ordinance in place, have experienced problems with these properties. The effect of the 2011 law is that two separate classes of cities were created respective to short-term rentals, those with Home Rule authority and those without.

In 2014, the Legislature passed SB 356 (Thrasher), which diminished the preemption on short-term rentals. The 2014 law allows local governments to adopt ordinances specific to these rentals so that they can address some of the noise, parking, trash and life-safety issues created by their proliferation in residential neighborhoods. Unfortunately, SB 356 left in place existing statutory language stating that cities cannot "prohibit" short-term rentals, or regulate the duration or frequency of the rental.

Those cities fortunate enough to have had an ordinance in place prior to the 2011 preemption are still allowed to regulate short-term rentals, but the question remains whether these ordinances will continue to be valid if amended. Some city attorneys believe these ordinances are "frozen" and any future amendments would cause a loss of the "grandfather." The problem with this is twofold. First, with the rise of popular rental websites like *Vacation Rental by Owner* (VRBO) and *AirBnB* making it easier to advertise and rent these properties, the number of properties used as short-term rentals in Florida has exponentially increased in the last four years. Second, as a result of this enormous growth in the rental market, the scope of the problem has changed and ordinances adopted before 2011 may no longer be effective.

It is important to note that many of Florida's larger cities (with a larger professional staff) fell into the grandfathered category. They have retained the ability to regulate these properties through zoning and may have duration and frequency requirements. Some of these cities may want to amend their ordinances to adjust to a changing problem. They are reluctant to do so out of fear of losing their existing ordinance and with it their Home Rule authority relating to short-term rentals. Recognizing that the ordinances on the books are no longer effective, cities want the ability to come up with solutions that work for their respective community, but because of the potential loss of the "grandfather," they are unable to do so. It is important to note that any potential amendments to existing ordinances would be vetted through numerous public hearings that allow neighboring

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homeowners, short-term rental owners, property managers and local businesses to weigh in on proposed legislation.

Cities without short-term rental regulations in place prior to June 1, 2011, have had their zoning authority stripped and are now seeing these rentals completely overtaking residential neighborhoods. Long-time residents are moving out as a result, and the residential character of traditional neighborhoods is slowly being destroyed.

The impacts of problematic short-term rentals on neighboring residents are felt in a number of ways:

The Hotel Next Door – Commercial Activity in Residential Neighborhoods

Houses that sleep 26 people are now present in what were once traditional neighborhoods. Because of the inability to regulate the duration of a renter's stay, these houses could experience weekly, daily or even hourly turnover. Obviously, the constant turnover of renters creates a number of issues for cities and neighboring property owners. Prior to the preemption, local governments were able to regulate this activity through zoning. Short-term rentals have become increasingly popular in the last five years. Because a city cannot "prohibit" these properties, they are powerless to exclude them from residential neighborhoods. As a result, investors, many of whom are located out of state or even in a different country, have purchased or built single-family homes with the sole intent of turning them into short-term rentals.

Cities use zoning as a tool to prepare for their future growth and also use it to control where commercial and residential properties are located. Hotels have different infrastructure needs than single-family residential properties. As residential neighborhoods are developed, the infrastructure installed is designed for the future use of the properties. Many neighborhoods have infrastructure in place with capacity for up to eight people per house. Now there are houses in these very same neighborhoods that sleep more people than the number originally planned for, placing a significant strain on existing infrastructure. Commercial properties like bars, hotels and restaurants typically need more parking than a single-family property, as well as have different operating hours and experience greater noise levels. The current law removes important land use and zoning tools that will impact how a city plans for future growth and levels of service.

Noise Complaints

In areas where short-term rentals are situated, many neighboring residents complain of the noise generated by the vacationing renters next door. When people go on vacation, often their behavior changes. They may stay awake later, consume more alcoholic beverages throughout the day, or participate in recreational activities that they would not participate in while at their own homes, such as swimming at midnight with music blaring. For those homes located near water, a lake or the ocean, it is important to note that sound travels easily over water – and residents located hundreds of yards away may be the ones calling and complaining to the police and their local elected officials.

Some cities have noise ordinances, but these have proved problematic to enforce. One such example is Lighthouse Point. Their ordinance requires sustained noise over a certain decibel threshold for 10 minutes. Many times after the police arrive at a residence, the noise dies down. These renters may leave the next day with new ones replacing them. The new renters are often

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unaware of the noise ordinance or past complaints and may cause the same problems. The out-of-state property owner may not even be aware of the problems created by their renters and with the constant turnover. The problem ends as one renter leaves and begins again as new renters arrive. This causes a significant drain on law enforcement resources. When law enforcement officers are called to respond to noise complaints, one less officer is on the street either preventing or solving crimes.

Parking

Many short-term rentals are located in single-family neighborhoods. In most cases, the driveway was built to accommodate two or three vehicles. When you now have a renovated house that acts as a small hotel, there will be more than three cars needed to get these renters to the property. This leads to cars that are parked on the street, making it difficult for emergency vehicles to respond to emergencies and causes increased response times in these neighborhoods. Cities have begun to adopt ordinances creating parking standards for short-term rental properties. Unfortunately, these ordinances only solve the parking issue, but fail to address any of the other issues created by this commercial activity in residential areas.

Revenue Issues

As stated earlier, a property rented more than three times a year for less than 30 days at a time meets the vacation rental definition and should be licensed by the state. The Department of Business and Professional Regulation (DBPR) is tasked with investigating unlicensed vacation rentals, but lacks the resources needed to fully investigate every complaint. Unlicensed vacation rentals could be costing Florida millions of dollars each year from lost licensing revenue.

Licensed short-term vacation rentals and hotels are also required to charge a sales tax to renters and then remit this back to the state. Many licensed and unlicensed vacation rentals are not doing this. The Florida Department of Revenue (DOR) has limited resources and cannot adequately monitor these transactions costing the state millions of dollars in lost revenue. Similarly, short-term rental owners in some counties are required to collect and remit the tourist development tax to the state. DOR is often unable to track down the vacation rental owners that are not paying the tourist development tax.

The Legislature began the conversation on short-term rentals in 2014, and the Florida League of Cities supported both HB 307 (Hutson) and SB 356 (Thrasher). The bills were a step in the right direction, but only partially restored Home Rule to Florida's cities. Cities are still prevented from regulating the duration and frequency of the rentals, and local zoning does not apply to these properties. Without the ability to regulate these key areas, local governments will not be able to adequately address the problem's associated with these properties.

Status:

There have been a number of different bills filed relating to short-term, vacation rentals.

The League opposes the following bills:

HB 773 (La Rosa) prohibits cities from establishing ordinances specific to short-term vacation rentals. Instead, the law would require that all residential properties be treated the same, regardless of whether the property is being used as a rental or not. HB 773 would allow cities with vacation

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rental ordinances in place prior to June 1, 2011, to amend their ordinance, but only if the amendment makes the regulation of vacation rentals less restrictive. HB 773 is in its first committee of reference, the House Government Accountability Committee.

CS/CS/SB 1400 (Steube), titled the Florida Vacation Rental Act, preempts all regulation of vacation rentals to the state. The bill:

- Creates a section preempting all licensing of vacation rentals to the state.
- Requires a state license application to contain the operator's emergency contact number.
- Allows a temporary state license to be issued and allows vacation rental to begin use while the application is pending.
- Allows the Division of Hotels and Restaurants to fine, suspend or revoke the license of any vacation rental when the advertisement for the vacation rental does not display the vacation rental license number.
- Regulates multiple unit vacation rentals. When five or more vacation rentals in multifamily dwellings are under common ownership and are rented out more than 180 days per year, such rental is subject to additional requirements, including biannual inspections.
- Defines a vacation rental as any unit in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is rented to guests for periods of less than 30 days but that is not a timeshare project.
- Requires the division to make the vacation rental license information available to the public, and allows local governments to use this license information for informational purposes only.
- Grandfathers local ordinances adopted on or before June 1, 2011 and allows "grandfathered" cities to amend as long as they are less restrictive.
- Sets maximum occupancy limits for vacation rentals.

The League supports:

SB 1640 (Simmons), is a comprehensive proposal providing more state oversight over short-term rentals, while also allowing for additional local regulation in certain circumstances. The bill requires vacation rentals to be licensed with the state and that certain licensing information be included in any advertisements or listings. The bill establishes penalties for failing to display this information. The bill defines "commercial vacation rental" as a property managed by one licensed agent under a single license for five or more vacation rental units or is part of five or more vacation rental units under common ownership, control or management. The bill establishes higher regulatory standards for commercial vacation rentals than non-commercial vacation rentals. The bill defines "hosting platform" and requires state registration and the payment of a registration fee of no more than \$1,000. The bill establishes biannual inspection requirements for commercial vacation rentals. The bill preserves ordinances in place prior to June 1, 2011, and allows for these ordinances to be amended if the amendment is less restrictive. The bill allows for local government regulations specific to vacation rentals that are in single-family residences where the owner is not personally occupying at least a portion of the residence where vacation rental activities are occurring. Vacation rental owners are required to submit a copy of their vacation rental license, a copy of the certificate of registration with the Department of Revenue, and the owner's emergency contact information to the city. The bill prohibits a city from charging a fee for the submission of this information and specifies that it is for informational purposes only. Finally, the bill requires hosting platforms to maintain records listing each transient public lodging establishment that it serves, the name of the

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operator, the transient public lodging establishment's license number and physical address, each period of rental reserved through the platform, and the itemized amounts collected from the guest by the platform for the rental, taxes and all other charges. These records must be maintained by the hosting platform for a period of three years and must be transmitted to the Department of Business and Professional Regulation (DBPR) every three months in an electronic format. The bill authorizes DBPR to fine a hosting platform for failure to comply with these provisions. Fine amounts cannot exceed \$1,000 per offense.

HB 789 (Stevenson) requires each person operating a short-term vacation rental to display a valid certificate of registration number in each rental listing or advertisement. The bill establishes a \$50 per day fine for first-time violators. Repeat offenders are subject to a \$100 per day fine for noncompliance. HB 789 is in the House Careers and Competition Committee.

Revised: 2/16/2018

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