



# city council agenda

**Agenda**  
**April 17, 2018 \* 6:30 PM**  
**City Council Meeting**

**City Hall Chambers 1600 Nela Avenue**

Lydia Pisano Mayor	Frank Kruppenbacher City Attorney	Bob Francis City Manager	Ed Gold District 1	Anthony Carugno District 2	Jeremy Weinsier District 3	Bobby Lance District 4	Harv Readey District 5	Lenny Mosse District 6	Sue Nielsen District 7
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## Welcome

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Welcome to the City of Belle Isle City Council meeting. Agendas and all backup material supporting each agenda item are available in the City Clerk's office or on the city's website at [cityofbelleislefl.org](http://cityofbelleislefl.org).

## Meeting Procedures

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Workshops are a working session and do not allow for public comment. Order and decorum will be preserved at all meetings. Personal, impertinent or slanderous remarks are not permitted. Thank you for participating in your city government.

1. Call to Order and Confirmation of Quorum
2. Invocation and Pledge to Flag - Ed Gold, Commissioner District 1
3. Consent Items
  - a. Proclamation: Celebrating Arbor Day April 28, 2018
  - b. Approval of the City Council meeting minutes for April 3, 2018

### 4. Citizen's Comments

**Persons desiring to address the Council MUST complete and provide to the City Clerk a yellow "Request to Speak" form located by the door.** After being recognized by the Mayor, persons are asked to come forward and speak from the lectern, state their name and address, and direct all remarks to the Council as a body and not to individual members of the Council, staff or audience. **Citizen comments and each section of the agenda where public comment is allowed are limited to three (3) minutes.** Questions will be referred to staff and should be answered by staff within a reasonable period of time following the date of the meeting. Order and decorum will be preserved at all meetings. Personal, impertinent or slanderous remarks are not permitted. Thank you.

### 5. Unfinished Business

- a. AirBnB / Short Term Rental Discussion with Public Comment
- b. Request by Adam McGinnis: Petition of City Waiver of Riparian Rights

### 6. New Business

- a. ORDINANCE NO.18-04 FIRST READING AND CONSIDERATION - AN ORDINANCE OF THE CITY OF BELLE ISLE, FLORIDA; AMENDING THE BELLE ISLE LAND DEVELOPMENT CODE, CHAPTER 48 ARTICLE II CONCERNING DOCK REGULATIONS, INCLUDING BUT NOT LIMITED TO PERMITTING, CRITERIA, EXCEPTIONS, REQUIREMENTS, MAINTENANCE, REPAIR, VARIANCES, APPLICATION PROCEDURES, DEFINITIONS, NONCONFORMING DOCKS, NUMBER, LOCATION, AND RELATED MATTERS; PROVIDING FINDINGS BY THE CITY COUNCIL; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

### 7. Attorney Report

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"If a person decides to appeal any decision made by the Council with respect to any matter considered at such meeting or hearing, he/she will need a record of the proceedings, and that, for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based." (F. S. 286.0105). "Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk's Office (407-851-7730) at least 48 hours in advance of the meeting." --Page 1 of 110

8. City Manager Report

- a. [Issues Log](#)
- b. Chief's Report

9. Mayor's Report

- a. Final Easter Egg Hunt Budget
- b. "Isle" Clean Up Event (streets and lakes)

10. Council Reports

11. Adjournment

# CITY OF BELLE ISLE



## Declaring April 28<sup>th</sup>, 2018 as *Arbor Day* in the City of Belle Isle

- Whereas, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and the first Earth Day marked a renewal of America's global leadership in conservation.
- Whereas, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and Whereas, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and
- Whereas, Arbor Day is now observed throughout the nation and the world, and Whereas, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce life-giving oxygen, and provide habitat for wildlife, and
- Whereas, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products, and
- Whereas, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community, and trees, wherever they are planted, are a source of joy and spiritual renewal.

Now, Therefore, I, Lydia Pisano, Mayor of the City of Belle Isle, do hereby proclaim, April 28<sup>th</sup>, 2018 as Arbor Day in the City of Belle Isle, and I urge all residents to celebrate Arbor Day and to support efforts to protect our trees and woodlands.

Further, I urge all residents to plant trees and promote the well-being of this, and future generations; and to broaden and diversify the environmental movement.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Belle Isle to be affixed this 17<sup>th</sup> day of April, in the year two thousand eighteen.

\_\_\_\_\_  
Mayor Lydia Pisano

Attest: \_\_\_\_\_  
Yolanda Quiceno, City Clerk





# city council minutes

## MINUTES April 3, 2018 City Council Regular Session: Regular Session 6:30pm

The Belle Isle City Council met in a regular session on April 3, 2018 at 6:30 p.m. at the City Hall Chambers located at 1600 Nela Avenue, Belle Isle, FL 32809.

Present was:

Mayor Lydia Pisano  
Vice Mayor/Commissioner Harvey Readey  
Commissioner Gold  
Commissioner Anthony Carugno  
Commissioner Jeremy Weinsier  
Commissioner Mike Sims  
Commissioner Alexa Dowlen  
Commissioner Sue Nielsen

Absent was:

N/A

Also present was City Manager Bob Francis, Attorney Kurt Ardaman, Chief Houston and City Clerk Yolanda Quiceno.

### CALL TO ORDER

Mayor Pisano called the regular session to order at 6:30pm and the City Clerk confirmed quorum. Comm Nielsen gave the invocation and led the Pledge to the flag.

Mayor Pisano asked for consideration to move Item #7-Consent Items up on the agenda to allow Comm Dowlen and Council the opportunity to approve the minutes before swearing in the new commissioners.

### CONSENT ITEMS

- a. Approval of the City Council meeting minutes for March 6, 2018
- b. Approval of the City Council meeting minutes for March 20, 2018

Comm Nielsen motioned to approve the Consent Items as presented.  
Comm Dowlen seconded the motion which passed unanimously.

### SWEAR-IN OF COMMISSIONERS

Mayor Pisano thanked Commissioner Dowlen for her service.  
Mayor Pisano welcomed and swore-in Harv Readey as Commissioner for District 5.  
Mayor Pisano welcomed and swore-in Jim Partin as Commissioner for District 6.

### LILFE SAVING AWARD

Chief Houston recognized and presented Office Andrew Clark with a Life Saving Award.

### CEREMONIAL SWEAR-IN OF OFFICER LILLO

Mayor Pisano welcomed and recognized Officer Michael Lillo.

### INTRODUCTION OF COMMUNITY SERVICE OFFICER (CSO) ROMAN WATKINS

Chief Houston recognized and welcomed CSO Roman Watkins.

## CITIZEN COMMENTS

Mayor Pisano opened for citizen comments.

- Adam McGinnis addressed his concern of some emails he has received from the Department of Environmental Protection (DEP) in which the City has discussed with them certain issues that have not be placed on the City agenda to reflect the representations made to DEP. He reminded Council of the Sunshine Law and possible open violations and would hope that the City will allow him the time to bring forward an issue.

There being no further comments, Mayor Pisano closed citizen comments.

## UNFINISHED BUSINESS

**ORDINANCE 18-04: FIRST READING AND CONSIDERATION** - AN ORDINANCE OF THE CITY OF BELLE ISLE, FLORIDA; AMENDING THE BELLE ISLE LAND DEVELOPMENT CODE, CHAPTER 48 ARTICLE II CONCERNING DOCK REGULATIONS, INCLUDING BUT NOT LIMITED TO PERMITTING, CRITERIA, EXCEPTIONS, REQUIREMENTS, MAINTENANCE, REPAIR, VARIANCES, APPLICATION PROCEDURES, DEFINITIONS, NONCONFORMING DOCKS, NUMBER, LOCATION, AND RELATED MATTERS; PROVIDING FINDINGS BY THE CITY COUNCIL; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE

Bob Francis, City Manager presented Ordinance 18-04 incorporating the changes as discussed at the Planning & Zoning Board meeting. The P&Z Board made changes to the ordinance that included sentence structure, grammar, or to make a passage clearer. The changes included:

- *Boat(s)* means all inboard and outboard motorized and non-motorized vessels, including, but not limited to, rowboats, sailboats, canoes, kayaks, skiffs, rafts, dugouts, dredges, personal watercraft, paddleboards, and other vehicles of transportation for use on water, including any and all objects tied to or connected therewith while being propelled through the water.
- This term does not include any boat that is temporarily docked, moored, or anchored for less than 10 hours in any one day.
- *Semi-private dock* means a dock, which may be used by a group of residents living in and authorized by a subdivision, Association, or multifamily development and their usual and customary guests.
- *Terminal platform* means that portion of a dock beginning at the point where the lateral width of the dock exceeds the maximum allowed width of the access walkway or provision is made for mooring boats. The terminal platform shall be designed for the mooring and launching of boats, or other water-dependent activities.
- (iii) The exact distance between the shoreward end of the proposed dock and two permanent objects (e.g., house, tree) to be used as reference points;
- (iv) The exact distance of setbacks from adjacent property lines and projected property lines to the nearest portion of the proposed dock and mooring area, and an approximation of the distance from the closest dock on each side of the property;
- Remove: The depth of the water at the end of the proposed terminal platform;
- (1) *Setbacks.* Private docks shall have a minimum side setback of five (5) feet from the projected property lines of all abutting shoreline properties. Public and Semi-private docks shall have a minimum side setback of twenty-five (25) feet from the projected property lines of all abutting shoreline properties. For purposes of setback, the terminal platform includes any moored boats. Any reduction from the minimum side setback will require a variance. (Shoreline should be changed to waterfront)

- (3) *Total area.* The terminal platform of the dock collectively may not exceed the square footage of ten times the linear shoreline frontage for the first 75 feet of shoreline and then five times the linear shoreline frontage for each foot in excess of 75 feet thereafter, and the total of each when combined shall not to exceed a maximum of 1,000 square feet. A maximum terminal platform area of 400 sf shall be allowed for properties with less than 40' of linear shoreline frontage. The area for the docking and mooring of boats and other appurtenances is included in the dock area calculation
- The length, size and location of a Dock on a canal are further limited to no more than a width of 14 feet along the canal frontage if boat traffic in the canal is not impeded or restricted by the proposed Dock.
- A navigable travel way of 25' width along the axis (center) of the canal shall be maintained between all docks and potential docks.
- (5) Storage lockers shall not exceed 30 inches in height above the deck and 67 cubic feet of volume. Storage lockers on a dock shall not be used to store boat maintenance and/or repair equipment and materials, fuel, fueling equipment, and hazardous materials or hazardous wastes. Storage lockers are prohibited on semi-private or publicly owned docks.
- (c) *Nonconforming "grandfathered" docks.* A dock that was duly permitted and authorized by the County when under County jurisdiction, or by the City under a previous version of the City's dock regulations, which dock does not conform with the City's current dock regulations under this article, shall be considered a "grandfathered" dock and shall be an authorized legally non-conforming structure, with the exception of those docks that are have active permits or enforcement actions on them at the time of the passage of this ordinance. Except for maintenance and repair activities allowed by this article, the expansion or modification of a legally non-conforming (or "grandfathered") dock is not permitted except in situations where: (i) the dock is brought into conformance with the then current dock regulations of this article, or (ii) the city determines that the dock will be modified in such a way as to substantially decrease or mitigate the dock's non-conformity with the current dock regulations of this article. However, when a grandfathered dock is damaged or requires any maintenance or repairs, the costs of which equal or exceed 75 percent to repair the dock, such maintenance or repair shall not be permitted unless the dock is brought into compliance with the current regulations under this article and any other relevant City regulation.
- (d) Minor modifications to permitted docks. Minor modifications to all existing docks must be approved by the city. The applicant must submit a request for the proposed deviation change or modification to the original site plan to the city manager for consideration. Additional information may be requested from the applicant in order to complete the review. Minor modifications must comply with the provisions of this article. Any modification that may require a variance or waiver of any provision of this article shall not be considered a minor modification. Any modification that increases the size of the terminal platform, or increase the horizontal or vertical footprint of the dock shall not be considered a minor modification. The city manager may require notification of abutting shoreline property owners of the application for minor modification. City approval or disapproval shall include a statement regarding requirement or no requirement for a permit.

Council discussed in depth the proposed side setback minimum design criteria of five feet. David Woods, Vice-Chairman of the Planning & Zoning Board gave a power point presentation in support of the proposed five foot criteria stating:

- Property owners want a clear view of the lake.
  - 95% of docks are near the property line.
- Property owners prefer to cluster docks.
  - 52% of docks are paired with adjoining docks.
- Setback is to dock or mooring area.
  - Terminal platform starts where provision is provided for mooring boats. 48-30
- Mooring area is included in terminal platform area 48-32 (a) (3)
  - If physical dock is less than boat width from setback line no mooring should be allowed.
- Side Yard setback should be 5'.

Mayor Pisano opened for public comment.

- Steve Up residing at 5415 Pasadena Drive spoke in favor of the change and said he is in agreement with the 5ft setback.
- David Trapper residing at 7836 Holiday Isle Drive spoke in favor of the 5 ft set back.
- Debra Dunham residing at 6904 Seminole Drive spoke in favor of the 5 ft setback.
- Rick Miller residing at 5437 Pasadena Drive said he is in agreement with the 10ft setback as addressed by Commissioner Carugno. He further asked who will be policing this code.

After discussion on the 5ft setback, Council consensus was to allow the five foot setback 6:1 with Comm Carugno nay.

Council discussed mooring hours for overnight guests. After discussion, consensus was to change the mooring time to 72hrs.

- David Trapper residing at 7836 Holiday Isle Drive spoke in favor of the proposed mooring time. He addressed the current issues at his HOA boat dock and overnight guests.

Bob Francis asked for approval of a definition for the linear shoreline frontage throughout the document. Mr. Woods read the definition as follows; linear shoreline frontage shall be a distance measured in a straight line between the two outer most properties corners at the normal high water contour.

**Comm Nielsen moved to have the City Manager incorporate all the changes as discussed for First Reading at the next Council meeting. Comm Readey seconded the motion.  
Motion passed 6:1 with Comm Carugno, nay.**

#### **NEW BUSINESS**

##### Approval of Cost Increase to Lake Conway Shores Storm Water Project

Mr. Francis requested approval for an increase in funding for the Lake Conway Shores Storm Water project. Lake Conway Shores has had a long standing problem with flowing during periods of intense rain. There are two areas that are a problem, (1) at the entrance and (2) at the lake lot. The solution is to channel all the storm water to the lake front lot and get it to Lake Conway without it flooding the area. After reviewing the request, he has decided that the Engineers will revisit the scope of work and reengineer the project to re-grade the swales starting at Honeysuckle. After further discussion, Council consensus was to have the City Manager go back to the current contractor or rebid the project.

##### Approval of Proposal for Traffic Management Plan

Mr. Francis provided his recommendation for the City-wide Traffic Management Plan Request for Proposal. He recommended approval of the Nelson Nygaard Consulting Group proposal in the amount of \$74,740.00.

**Comm Gold moved to approve Nelson Nygaard Consulting for the Transportation Master Plan in the amount of \$74,740.00. Comm Carugno seconded the motion which passed unanimously.**

#### Discussion on Funding the CCA Capital Facilities Plan and Responsibilities for Repair

Mr. Francis opened discussion the funding for funding of the CCA Facilities Repair and Replacement. Atkins Engineering provided an assessment and other estimates received it allowed the City to form a Capital Facilities Plan. The entire envelope of the school was assessed and placed the repairs in an immediate, short range and long range repair. All items were within the immediate to short plan repair. As per Section 6.3 of the lease the landlord will be required to make HVAC, exterior and structural repairs as may be required and the tenant is required to make all others repairs. He further addressed the lease interpretations that need to be clarified and resolved with the CCA School Board before moving forward. In addition, Mr. Francis briefly reviewed the proposed Capital Facilities Plan and discussed repayment of the funds that were used to pay for the purchase of the Wallace property.

**After discussion of the proposed plan, Comm Nielsen moved to approve the proposed capital facilities plan as discussed contingent upon CCA's approval of the City's allocations.**

**Comm Sims seconded the motion which passed unanimously 7:0.**

#### RESOLUTION NO. 18-02 - A RESOLUTION OF THE CITY OF BELLE ISLE, FLORIDA TO RESTRICT THE USE OF FUNDS IN THE CHARTER SCHOOL DEBT SERVICE FUND (FUND 201); AND PROVIDING AN EFFECTIVE DATE.

Mr. Francis presented Resolution 18-02 proposing that the Charter School Debt Service Fund be restricted to expenses directly related to the governance and administration of the Charter School, Revenue Bond and Lease Agreement.

**Comm Partin motioned to adopted Resolution 18-02.**

**Comm Nielsen seconded the motion which passed unanimously 7:0.**

#### RESOLUTION NO. 18-03 - A RESOLUTION DECLARING SURPLUS CERTAIN PERSONAL PROPERTY AND DIRECTING THE CITY MANAGER TO DISPOSE OF THE PROPERTY FOR VALUE THROUGH AN OPEN PUBLIC PROCESS.

Mr. Francis requested approval to surplus the Code Enforcement Smart Car. He stated that the City will solicit three bids for the property

**Comm Nielsen motioned to adopted Resolution 18-03.**

**Comm Gold seconded the motion which passed unanimously 7:0.**

#### RESOLUTION NO. 18-04 - A RESOLUTION OF THE CITY OF BELLE ISLE, FLORIDA, AUTHORIZING THE CITY MANAGER TO ISSUE A PURCHASE ORDER TO TRANE US, INC. OR OTHER VENDOR APPROVED BY ORANGE COUNTY PUBLIC SCHOOLS FOR THE PURCHASE AND INSTALLATION OF EQUIPMENT FOR HVAC EQUIPMENT, PIGGYBACKING ORANGE COUNTY PUBLIC SCHOOL DISTRICT ITB NO. 1302039; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

#### RESOLUTION NO. 18-05 - RESOLUTION OF THE CITY OF BELLE ISLE, FLORIDA, AUTHORIZING THE CITY MANAGER TO ISSUE A PURCHASE ORDER TO ANY OR ALL VENDORS APPROVED BY ORANGE COUNTY PUBLIC SCHOOLS FOR ROOFING SERVICES, PIGGYBACKING ORANGE COUNTY PUBLIC SCHOOL DISTRICT ITB NO. 1410214; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

Mr. Francis requested approval to authorize purchase of equipment by piggybacking on Orange County Public School contracts for replacement of HVAC and roofing repair. The pricing is competitive and comparable to other estimates and will save the City research cost and time.

**Comm Partin motioned to adopted Resolution 18-04 and Resolution 18-05.**

**Comm Nielsen seconded the motion which passed unanimously 7:0.**

#### **ATTORNEY'S REPORT**

- Attorney Ardaman stated that the City will be meeting with the CCA Board next week on a number of issues and will report back at the following City Council meeting.
- He gave a brief update on the FWC Administrative Hearing. He said FWC is receptive to hearing a potential resolution. He has discussed some ideas with the City Manger and will enter into further substantive discussion with FWC. If the discussion is something that will be desirable by the City Council he will bring it back to the City Council for vetting and decision.



## **CITY MANAGER'S REPORT**

- Mr. Francis gave an update on the issues log;
  - Venetian Boat Ramp sign is almost complete and will be installed the following week.
  - In addition, the City has filled the void at the basin at the Perkins Boat ramp and will be placing the wheel stops. In the near future the City will place stone on the driveway to eliminate some of the dust and runoff into the lake. The surveyor will be installing the gauge in the water within the next week or two.
- Mr. Francis addressed the comments made by Adam McGinnis and would like to see the emails from FDEP. One of the issues is that the City has upland rights of Cross Lake Beach. Apparently the City relinquished the rights in the 1960's for that part of the beach which then went back under State control. We have a public right of way from the intersection to the bollards. Mr. McGinnis is interested in buying the land but the State said he will not be able to purchase the property without the City's approval. Mr. Francis said he told Mr. McGinnis if the City has the opportunity to purchase the land the City will move forward with the purchase. Mr. Francis has sent the application to the State to purchase the land he then applied to the Orange County Board of Commissioners for their recommendation and resolution.

Mr. Francis asked if Council does not want to continue with the process to purchase the property he would welcome other options and direction. Comm Sims asked what will be the advantages for the City to purchase the property verses the neighboring homeowner. Comm Sims said he would like to slow down and understand why Mr. McGinnis wants to buy the property.

Mr. Francis said Mr. McGinnis explained that he is currently land locked and this will give him the opportunity to build and access his property. Cross Lake Beach is part of the City's Comp Plan since 1990 and goes towards the required open space total.

Comm Carugno stated that this is the only park on the of the north side of the City.

Council consensus was to have the City Manager proceed with the process and to allow Mr. McGinnis the opportunity to present his proposal at a future City Council meeting. In addition, Comm Nielsen would like to verify that the park is consistently utilized by the residents.

## **CHIEF'S REPORT**

Mr. Francis reported that the State is making it mandatory to have Resource Officers full time at all schools. Because of this change the City will have to place a full time Resource Officer at Pine Castle Elementary per contract and will incur some overtime. He has authorized for her to place an officer as required until the end of the contract this year.

Chief Houston reported that the State passed the Marjorie Stone Douglas High School Public Safety Act which mandates all superintendents to ensure that there is a sworn law enforcement officer on site. To be in compliance, the Agency will be required to have a full time officer at both schools which will be supplemented financially a few days a week by Orange County Public Schools.

## **MAYOR'S REPORT**

Mayor Pisano reported the following,

- School Board meeting is scheduled for April 25<sup>th</sup> at 3:00pm
- The final Easter Egg Hunt budget will be provided at the April 17<sup>th</sup> meeting.
- AirBnB will be placed on the April 17<sup>th</sup> agenda.
- "Isle" Clean Up event is scheduled for May 5<sup>th</sup>. With the City Manager's approval the Special Events committee is looking to put out a survey to see what type of events interest the residents.

## **COUNCIL REPORTS**

### **Comm Nielsen - District 7**

- Comm Nielsen said Council is supposed to approve events and would like to see a description of the Clean Up event before moving forward. After discussion, Mayor Pisano asked for approval of the date only for the "Isle" Clean Up.
  - **Comm Carugno motioned to approve the date only of May 5<sup>th</sup> for the "Isle" Clean Up event.**
  - **Comm Sims seconded the motion which passed unanimously 7:0.**
- Comm Nielsen asked for an update on the Delia Beach project. Mr. Francis said the contract is also complete and is looking to go out to bid shortly.

**Comm Partin – District 6**

Comm Partin reported that parent were asking about the school safety meeting and continue to ask for transparency.

**Comm Sims – District 4**

Comm Sims spoke of some of the concerns on the s-curve damage on Trentwood. He said he will not be in attendance at the following meeting and asked for consideration on approving AirBnBs.

**Comm Readey – District 5 – no report.**

**Comm Weinsier – District 3**

Comm Weinsier spoke on the last election and the resident support on the charter changes. He would like to see the vote to be similar to the Florida Constitution to be 60%+ of the voters instead of current 51%. He would like to request staff to draft an ordinance to see what it would look like.

**Comm Weinsier motioned to have staff draft an ordinance for discussion at a future agenda.**

**Comm Sims seconded the motion which passed unanimously 7:0.**

**Comm Carugno – District 2**

- Comm Carugno shared his concern with Council making motions on non-agenda items.
- Comm Carugno spoke on the quality of the lakes and the floating algae and floating weeds.

**Comm Gold – District 1**

- **Comm Gold thanked the City Manager for putting out the video on the Charter changes.**

City Manager Francis reported that the City has hired a part time media specialist Sloan Waranch.

**ADJOURNMENT**

There being no further business Mayor Pisano called for a motion to adjourn, unanimously approved at 9:35 p.m.

Yolanda Quiceno, CMC, City Clerk



**CITY OF BELLE ISLE, FLORIDA  
CITY COUNCIL AGENDA ITEM COVER SHEET**

**Meeting Date:** April 17, 2018

**To:** Honorable Mayor and City Council Members

**From:** B. Francis, City Manager

**Subject:** Short Term Rentals (STR)

**Background:** The BI Municipal Code Section 7-30 prohibits short term rentals for periods of less than seven months. The Code Enforcement Officer found that some residences are in violation of the code and they are using their homes as short term rentals. Short-term rentals are defined as any stay 30 days or less, and have been popularized and promoted by online vacation home rental sites like Airbnb, VRBO and HomeAway. These property owners have approached City Council and asked the Council to change the code. Council directed City staff to provide information on short term rentals.

With the launch of on-demand rental reservation websites such as Airbnb, the short-term rental market has been growing at a very healthy (and, to some, alarming) pace. While short-term rentals may benefit some local markets by promoting tourism and revenues, and making ownership of investment properties (and vacations!) more affordable for many, short-term rentals also come with some undeniable drawbacks.

The short-term rental issue pits long-time and year-round residents against investors and their renters. Investors rely on an income stream from rentals. But an ever-changing flow of vacation and transient renters can cause headaches for the community in the form of increases in noise and traffic, reduced housing stock for permanent residents, concerns about safety, and unfair competition with longstanding and legitimately licensed establishments in the area.

Some communities have taken very different approaches in their attempt to regulate the issue. Some have placed restrictions on the length of time for rentals, requiring that they be no shorter than 30 or 60 days, for example. Others have prohibited or outlawed short-term rentals altogether, as in the case of Belle Isle.

Other communities have taken the opposite approach and have allowed for short-term rentals, but with restrictions and requirements that help to ensure a quality experience for both renters and local residents. For example, some of these solutions involve one or more of the following elements:

- Discrete tourist zones where rentals are allowed
- Grandfathering of existing rental policies to allow, but not for new rentals
- Transient rental occupancy license requirements
- Permits and posting of owner's contact information for complaints
- Stiff fines for landlords with nuisance tenants

The staff wanted to provide studies on the economic impacts of STRs to the community, and there are plenty of studies that support the economics of STRs, but can Belle Isle be compared to other communities? We are very limited in commercial development, whereas other communities have a strong commercial base and much to do in their community. There have been individuals who testified at Council that they provide information about the area to those who stay with them, but does any of those dollars impact Belle Isle, or is the only positive economic impact to those who have STRs?

**Staff Recommendation:** Review the information provided, take public testimony and determine a direction. If more information is needed, then schedule a workshop include public comment in the workshop to determine a direction.

**Suggested Motion:** None

**Alternatives:** Do not approve STRs

**Fiscal Impact:** TBD

**Attachments:** Articles on STRs



# **A PRACTICAL GUIDE TO EFFECTIVELY REGULATING SHORT-TERM RENTALS ON THE LOCAL GOVERNMENT LEVEL**

**Ulrik Binzer, Founder & CEO Host Compliance LLC**



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## Introduction: The meteoric rise of “home-sharing” and short-term rentals

Sharing our homes has been commonplace for as long as there have been spare rooms and comfortable couches. Whether through word of mouth, ads in newspapers or flyers on community bulletin boards, renters and homeowners alike have always managed to rent out or share rooms in their living spaces. Traditionally these transactions were decidedly analog, local and limited in nature, but with advance of the internet and websites such as Airbnb.com and HomeAway.com it has suddenly become possible for people to advertise and rent out their homes and spare bedrooms to complete strangers from far-away with a few mouse-clicks or taps on a smartphone screen. As a result, the number of homes listed for short-term rent has grown to about 4 million, a 10 fold increase over the last 5 years. With this rapid growth, many communities across the country are for the first time experiencing the many positive and negative consequences of an increased volume of “strangers” in residential communities. While some of these consequences are arguably positive (increased business for local merchants catering to the tourists etc.) there are also many potential issues and negative side-effects that local government leaders may want to try to mitigate by adopting sensible and enforceable regulation.

How to effectively regulate home-sharing and short-term rentals has therefore suddenly become one of the hottest topics among local government leaders across the country. In fact, at the recent National League of Cities conference in Nashville, TN, there were more presentations and work sessions dedicated to this topic than to any other topic. Yet, despite more than 32,000 news articles written on the topic in recent years<sup>1</sup>, surprisingly little has been written on how to implement simple, sensible and enforceable local policies that appropriately balances the rights of homeowners with the interests of neighbors and other community members who may only experience the negative side-effects associated with people renting out their homes on a short-term basis. This guide seeks to address this knowledge gap and offer practical advice and concrete examples of short-term rental regulation that actually works.

## Why regulate home-sharing and short-term rentals in the first place?

There are many good reasons why local government leaders are focused on finding ways to manage the rapid growth of home-sharing and short-term rental properties in their communities. To name a few:

1. Increased tourist traffic from short-term renters has the potential to slowly transform peaceful residential communities into “communities of transients” where people are less interested in investing in one another’s lives, be it in the form of informal friend groups or church, school and other community based organizations.



2. Short-term renters may not always know (or follow) local rules, resulting in public safety risks, noise issues, trash and parking problems for nearby residents.
3. So-called “party houses” i.e. homes that are continuously rented to larger groups of people with the intent to party can severely impact neighbors and drive down nearby home values.
4. Conversion of residential units into short-term rentals can result in less availability of affordable housing options and higher rents for long-term renters in the community.
5. Local service jobs can be jeopardized as unfair competition from unregulated and untaxed short-term rentals reduces demand for local bed & breakfasts, hotels and motels.
6. Towns often lose out on tax revenue (most often referred to as Transient Occupancy Tax / Hotel Tax / Bed Tax or Transaction Privilege Tax) as most short-term landlords fail to remit those taxes even if it is required by law.
7. Lack of proper regulation or limited enforcement of existing ordinances may cause tension or hostility between short-term landlords and their neighbors
8. The existence of “pseudo hotels” in residential neighborhoods (often in violation of local zoning ordinances etc.) may lead to disillusionment with local government officials who may be perceived as ineffective in protecting the interests of local tax-paying citizens.

In short, while it may be very lucrative for private citizens to become part-time innkeepers, most of the negative externalities are borne by the neighbors and surrounding community who may not be getting much in return. The big question is therefore not whether it makes sense to regulate short-term rentals, but how to do it to preserve as many of the benefits as possible without turning neighbors and other local community members into “innocent bystanders”. In the next sections we will explore how to actually do this in practice.

## **Effective short-term rentals regulation starts with explicit policy objectives and a clear understanding of what regulatory requirements can be enforced**

As with most regulation enacted on the local level, there is no “one size fits all” regulatory approach that will work for all communities. Instead local regulation should be adapted to fit the local circumstances and policy objectives while explicitly factoring in that any regulation is only worth the paper it is written on if it can be enforced in a practical and cost-effective manner.

### **Start with explicit policy objectives!**

As famously stated in Alice in Wonderland: *“If you don't know where you are going, any road will get you there.”* The same can be said about short-term rental regulation, and unfortunately many town and city councils end up regulating the practice without first thinking through the community's larger strategic objectives and exactly which of the potential negative side effects



associated with short-term rentals that the regulation should try to address. As an example, the Town of Tiburon in California recently passed a total ban of short-term rentals without thinking through the severely negative impact of such regulation on its stated strategic policy objective of revitalizing its downtown. Likewise the City of Mill Valley, California recently adopted an ordinance requiring short-term landlords to register with the city, while failing to put in place an effective mechanism to shut-down “party-houses” although there had been several complaints about such properties in the past. Such oversight was clearly unintentional but highlights the fact that the topic of regulating short-term rentals is extremely complicated and it is easy to miss the forest for the trees when it comes time to actually writing the local code. To avoid this pitfall, local government leaders should therefore first agree on a specific list of goals that the new short-term rental regulation should accomplish *before* discussing any of the technical details of how to write and implement the new regulation. Any draft regulation should be evaluated against these specific goals and only code requirements that are specifically designed to address any of those concrete goals should be included in the final ordinance. Below are a few concrete examples of what such lists of concrete policy objective could look like for various types of communities:

### Example A: List of short-term rental policy objectives for an affluent residential community in attractive location

- Ensure that traditional residential neighborhoods are not turned into tourist areas to the detriment of long-time residents
- Ensure any regulation of short-term rentals does not negatively affect property values (and property tax revenue)
- Ensure that homes are not turned into pseudo hotels or “party houses”
- Minimize public safety risks and the noise, trash and parking problems often associated with short-term rentals without creating additional work for the local police department
- Give permanent residents the option to occasionally utilize their properties to generate extra income from short-term rentals as long as all of the above mentioned policy objectives are met

### Example B: List of short-term rental policy objectives for an urban community with a shortage of affordable housing

- Maximize the availability of affordable housing options by ensuring that no long-term rental properties are converted into short-term rentals
- Ensure that short-term rentals are taxed in the same way as traditional lodging providers to ensure a level playing field and maintain local service jobs
- Ensure that the city does not lose out on hotel tax revenue that could be invested in much needed services for permanent residents



- Minimize public safety risks and the noise, trash and parking problems often associated with short-term rentals without creating additional work for the local police department
- Give citizens the option to utilize their properties to generate extra income from short-term rentals as long as all of the above mentioned policy objectives are met

### Example C: List of short-term rental policy objectives for a working-class suburban community with ample housing availability and a struggling downtown

- Give property owners the option to utilize their properties as short-term rentals to help them make ends meet
- Encourage additional tourism to drive more business to downtown stores and restaurants
- Minimize public safety risks and the noise, trash and parking problems often associated with short-term rentals without creating additional work for the local police department
- Ensure that the city does not lose out on tax revenue that could be invested in much needed services for permanent residents

### Example D: List of short-term rental policy objectives for beach town with a large stock of traditional vacation rentals

- Ensure any regulation of short-term rentals does not negatively affect the value of second homes (and thereby property tax revenue)
- Encourage increased visitation to local stores and restaurants to increase the overall availability of services and maximize sales tax collections
- Minimize public safety risks and the noise, trash and parking problems associated with existing short-term rentals without creating additional work for the local police department

Once clear and concrete policy objectives have been formulated the next step is to understand what information can be used for code enforcement purposes, so that the adopted short-term rental regulation can be enforced in a cost-effective manner.

## Only adopt policy requirements that can and will be enforced!

While it may seem obvious that *only enforceable legislation should be adopted*, it is mind-boggling how often this simple principle is ignored. To give a few examples, the two California towns previously mentioned not only failed to adopt regulation consistent with their overall strategic policy objectives, but also ended up adopting completely unenforceable rules. In the case of Tiburon, the town council instituted a complete ban of all short-term rentals within its jurisdiction, but not only failed to allocate any budget to enforce it, but also failed put in place



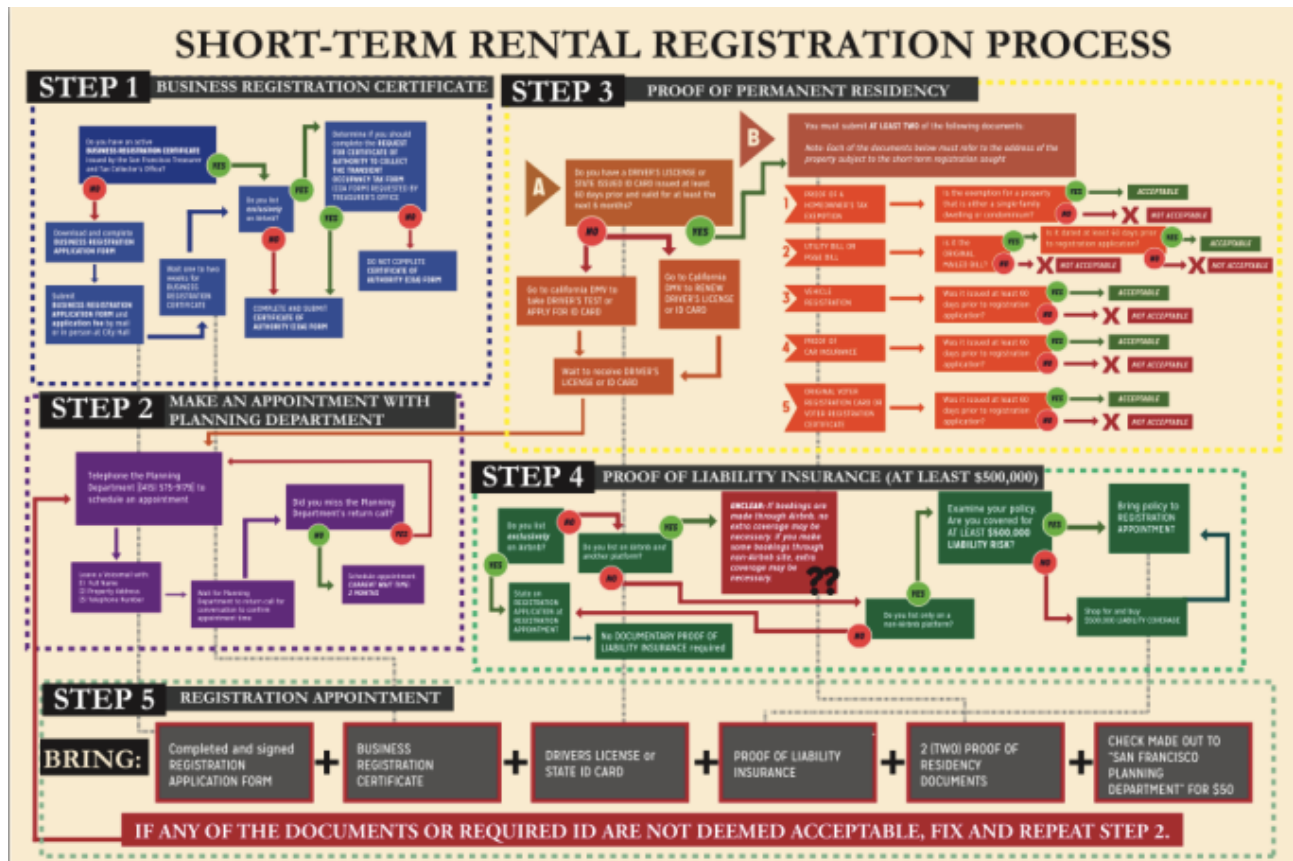
finances large enough to deter any violation of the ban. As a result, the number of properties listed for rent has remained virtually unchanged before and after the ban.

In the case of Mill Valley, the town’s registration requirement turned out to be completely unenforceable as the town’s personnel had neither the technical expertise, time nor budget to track down short-term landlords that failed to register. As a result, the town has had to rely exclusively on self-reporting, and unsurprisingly the compliance rate has been less than 5%.

As for local governments that require short-term rental property owners to pay tax to the local jurisdiction without allocating budget to enforcing such rules, they have found themselves in similar situations, with compliance rates in the 5% range.

## Keep it simple!

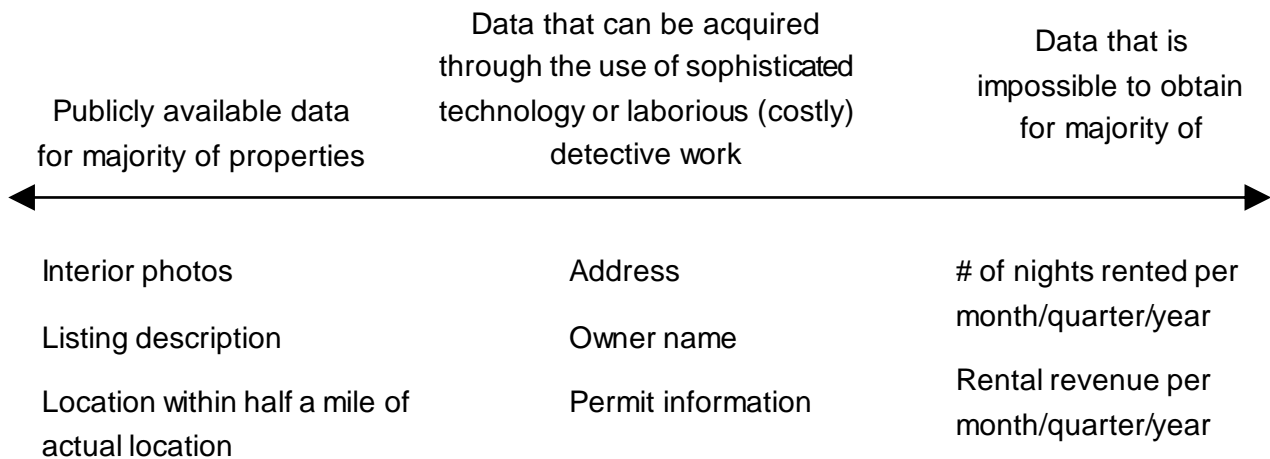
Another common mistake is for cities to adopt complicated rules that are hard for citizens to understand and follow and that require large investments in enforcement. As an example, despite setting up a dedicated department to enforce its short-term rental regulation, the City of San Francisco has only achieve a 10-15% compliance rate as its regulation is so complicated and its registration process so agonizing that most people give up before even trying to follow the rules. Below is flow-chart that illustrates San Francisco’s cumbersome short-term rental registration process.





While hindsight is 20/20, it is worth noting that the registration requirements were probably well-intended and made logical sense to the council members and staff that adopted them. The problem was therefore not ill-will but a lack of understanding of the practical details as to how the various short-term rental websites actual work. As an example, San Francisco’s short-term rental regulation require that property owner’s display their permit number on any advertising (including online listings) whereas Airbnb’s website has built-in functionality that specifically prevents short-term landlords from doing so and automatically deletes all “permit sounding” information from the listings in most locations. Likewise, San Francisco’s legislation bans anyone for renting their homes for more than 90 days per calendar year, while none of the home-sharing websites give code enforcement officers the ability to collect the data necessary to enforce that rule. To make matters worse, the listing websites have refused to share any property specific data with the local authorities and have even gone as far as suing the cities that have been asking for such detailed data. Local government officials should therefore not assume that the listing websites will be collaborative when it comes to sharing data that will make it possible for local code enforcement officers to monitor compliance with complicated short-term rental regulation on the property level. Instead, local government leaders should seek to carefully understand the data limitations before adopting regulation that cannot be practically enforced. To get a quick overview of what information that can be relied on for short-term rental compliance monitoring and enforcement purposes, please see the diagram below that shows which:

1. data is publicly available on the various home-sharing websites
2. information that can be uncovered through the deployment of sophisticated “big data” technology and trained experts (or time-consuming and therefore costly detective work conducted by a town’s own staff)
3. property specific details that are practically impossible to obtain despite significant investment of time and money



So where does that leave local government leaders who want to put in place enforceable short-term rental regulation? In the next section we will explore, describe, and assess the viable regulatory tools available for local government leaders to effectively address the key issues related to taxation, regulation, social equity and economic development.

## Viable regulatory approaches to managing short-term rentals

As mentioned earlier, the first step to creating effective short-term rental regulation is to document and get agreement on a set of clear and concrete policy objectives. Once this has been accomplished, putting together the actual regulatory requirements can be simplified by referring to the “cheat sheet” below, which lists the regulatory levers that can be pulled to accomplish those goals in a practical and cost-effective manner while factoring in the data limitations highlighted in the previous section.

Short-term Rental Policy Objectives and the Associated Viable Regulatory Approaches		
Policy Objective	Viable Regulatory Approach(es)	Unviable Regulatory Approach(es)
Give <b>law abiding and respectful</b> citizens the option to utilize their homes as short-term rentals	Adopt a formal annual permitting requirement and a process for revoking permits from “trouble properties”. As an example a local government can adopt a “3 strikes rule” whereby a permit is automatically revoked for a number of years in the event the local government receives 3 (substantiated) complaints about a property within a certain time frame (i.e. a 24 month period). Alternatively, a local government can adopt a rule by which a permit is automatically revoked in the event the town receives conclusive evidence (police report, video evidence etc.) that a city ordinance has been violated.	Failing to clearly specify what rules law abiding and respectful short-term landlords and their renters must comply with. Adopting regulation that does not clearly define the criteria and process for revoking a short-term rental permit.
Ensure that speculators do not buy up homes to turn them into pseudo hotels while still giving <b>permanent</b>	Adopt a formal permit requirement and make it a condition that the permit holder verifies residency on an annual	Adopting a permitting process that does <b>not</b> formally require short-term rental permit

<p><b>residents</b> the option to utilize their homes to generate extra income from short-term rentals</p>	<p>basis by submitting the same documentation as is required to verify residency for public school attendance purposes</p>	<p>holders to verify that they are permanent residents of the permitted property</p>
<p>Ensure that homes are <b>only</b> occasionally used as short-term rentals (and <b>not</b> continuously rented out to new people on a short term basis)</p>	<p>It is unfortunately not practically possible to enforce any formal limits on the number of times or number of days that a particular property is rented on an annual/quarterly/monthly basis, but adopting a permanent residency requirement for short-term rental permit holders (see above) can ensure that there is a practical upper limit to how often most properties are rented out each year (most people can only take a few weeks of vacation each year and they are therefore practically restricted to rent out their homes for those few weeks). There is unfortunately no easy way to deal with the tiny minority of homes where the “permanent resident” owners have the ability to take extended vacations and rent out their home continuously. That said, if the above mentioned “permanent residency requirement” is combined with rules to mitigate noise, parking and trash related issues, the potential problems associated with these few homes should be manageable.</p> <p>Adopting a “permanent residency requirement” also comes with the additional side benefit that most people don’t want to rent out their primary residence to people who may trash it or be a nuisance to the neighbors. The “permanent residency requirement” can therefore also help minimize noise, parking and trash related issues.</p>	<p>A formal limit on the number of times or number of days each property can be rented on an annual/quarterly/monthly basis is not enforceable as occupancy data is simply not available without doing a formal audit of each and every property.</p>

<p>Ensure homes are <b>not</b> turned into “party houses”</p>	<p>Adopt a formal permit requirement and put in place a specific limit on the number of people that are allowed to stay on the property at any given time. The “people limit” can be the same for all permitted properties (i.e. a max of 10 people) or be correlated with the number of bedrooms. In addition, the regulation should formally specify that any advertisement of the property (offline or online) and all rental contracts must contain language that specifies the allowed “people limit” to make it clear to (potential) renters that the home cannot be used for large gatherings. While not bullet-proof, adopting these requirements will deter most abuse. In addition it is possible to proactively enforce this rule as all listing websites require (or allow) hosts to indicate their property’s maximum occupancy on the listings.</p>	<p>Adopting any regulation that does not clearly define what types of uses are disallowed will be ineffective and likely result in misinterpretation and/or abuse.</p>
<p>Minimize potential parking problems for the neighbors of short-term rental properties</p>	<p>Adopt a formal permit requirement and put in place a specific limit on the number of motor vehicles that short-term renters are allowed to park on/near the property. The “motor vehicle limit” can be the same for all permitted properties (i.e. a max of 2) or be dependent on the number of permanent parking spots available on the property. In addition, the regulation should formally specify that any advertisement of the property (offline or online) and any rental contract must contain language that specifies the allowed “motor vehicle limit” to make it clear to (potential) renters that bringing more cars is disallowed. As with the “people limit” rule mentioned above,</p>	<p>Adopting any regulation that does not clearly define a specific limit on the number of motor vehicles that short-term renters are allowed to park on/near the property.</p>

	adopting these parking disclosure requirements will deter most abuse. In addition it is easy to proactively enforce this rule as most listing websites require or allow their hosts to describe their property's parking situation on the listing.	
Minimize public safety risks and possible noise and trash problems without creating additional work for the local police department and code enforcement personnel	<ol style="list-style-type: none"> <li>1. Require that all short-term rental contracts include a copy of the local sound/trash/parking ordinances and/or a "Good Neighbor Brochure" that summarizes the local sound/trash/parking ordinances and what is expected of the renter.</li> <li>2. Require that short-term rental permit holders list a "local contact" that can be reached 24/7 and immediately take corrective action in the event any non-emergency issues are reported (i.e. deal with suspected noise, trash or parking problems)</li> <li>3. Establish a 24/7 hotline to allow neighbors and other citizens to easily report non-emergency issues without involving local law/code enforcement officers. Once notified of a potential ordinance violation, the hotline personnel will contact the affected property's "local contact", and only involve the local law and/or code enforcement personnel in the event that the "local contact" is unsuccessful in remedying the situation within a reasonable amount of time (i.e. 20-30 minutes).</li> </ol>	Adopting any regulation and enforcement processes that do not explicitly specify how non-emergency problems should be reported and addressed.
Ensure that no long-term rental properties are converted to short-term	Adopt a permanent residency requirement for short-term rental permit holders (see above) to	Adopting a permitting process that does <b>not</b> formally require short-



rentals to the detriment of long-term renters in the community	prevent absentee landlords from converting long-term rental properties into short-term rentals.	term rental permit holders to verify that they are permanent residents of the permitted property will be ineffective in preventing absentee landlords from converting their long-term rental properties into short-term rentals.
Ensure that residential neighborhoods are not inadvertently turned into tourist areas to the detriment of permanent residents	Implement one or both of the following regulatory approaches: <ol style="list-style-type: none"> <li>1. Adopt a formal permit requirement and set specific quotas on the number of short-term rental permits allowed in any given neighborhood, and/or</li> <li>2. Adopt the “permanent residency requirement” for short-term rental permit holders (mentioned above) to ensure that there is a practical upper limit to how often any property is rented out each year</li> </ol>	Adopting a complete ban on short-term rentals, unless such a ban is heavily enforced.
Ensure any regulation of short-term rentals does not negatively affect property values or create other unexpected negative long-term side-effects	Adopt regulation that automatically expires after a certain amount of time (i.e. 2-5 years) to ensure that the rules and processes that are adopted now are evaluated as the market and technology evolves over time.	Adopt regulation that does not contain a catalyst for evaluating its effectiveness and side-effects down the line.
Ensure the physical safety of short-term renters	Adopt a physical safety inspection requirement as part of the permit approval process. The inspection can be conducted by the municipality’s own staff or the local fire/police force and can cover various amounts of potential safety hazards. As a minimum such inspection should ensure that all rentals provide a minimum level of protection to the renters who are sleeping in	Adopting a self-certification process that does not involve an objective 3 <sup>rd</sup> party.

	unfamiliar surroundings and therefore may be disadvantaged if forced to evacuate the structure in the event of an emergency.	
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In addition to the above targeted regulatory measures, local governments should adopt requirements for short-term rental permit holders to maintain books and records for a minimum of 3 years so that it is possible to obtain the information necessary to conduct inspections or audits as required. Finally, it is imperative that local governments adopt fine structures that adequately incentivizes short-term landlords to comply with the adopted regulation. Ideally the fines should be proportionate to the economic gains that potential violators can realize from breaking the rules, and fines should be ratcheted up for repeat violators. Below is an example of a fine schedule that will work for most jurisdictions:

	1 <sup>st</sup> violation	2 <sup>nd</sup> violation	3 <sup>rd</sup> violation	4 <sup>th</sup> violation
Fine for advertising a property for short-term rent (online or offline) without first having obtained a permit or complying with local listing requirements	\$200 per day	\$400 per day	\$650 per day	Upon the fourth or subsequent violation in any twenty-four month period, the local government may suspend or revoke any permit. The suspension or revocation can be appealed.
Fine for violating any other requirements of the local government's short-term rental regulation	\$250 per day	\$500 per day	\$750 per day	
<b>Notes:</b> <ul style="list-style-type: none"> <li>(a) Any person found to be in violation of this regulation in a civil case brought by a law enforcement agency shall be ordered to reimburse the local government and other participating law enforcement agencies their full investigative costs, pay all back-owed taxes, and remit all illegally obtained short-term rental revenue proceeds to the local government</li> <li>(b) Any unpaid fine will be subject to interest from the date on which the fine became due and payable to the local government until the date of payment.</li> <li>(c) The remedies provided for in this fine schedule are in addition to, and not in lieu of, all other legal remedies, criminal or civil, which may be pursued by the local government to address any violation or other public nuisance.</li> </ul>				

## Best Practices for Enforcing Short-term Rental Regulation

To implement any type of effective short-term rental regulation, be it a total ban, a permitting requirement, and/or a tax, local governments must expect to invest some level of staff time and/or other resources in compliance monitoring and enforcement. That said, most local governments are neither technically equipped nor large enough to build the true expertise and



sophisticated software needed to do this cost-effectively. There are several reasons why this is the case:

1. Rental property listings are spread across dozens (or hundreds) of different home sharing websites, with new sites popping up all the time (Airbnb and HomeAway are only a small portion of the total market)
2. Manually monitoring 100s or 1,000s of short-term rental properties within a specific jurisdiction is practically impossible without sophisticated databases as property listings are constantly added, changed or removed
3. Address data is hidden from property listings making it time-consuming or impossible to identify the exact properties and owners based just on the information available on the home-sharing websites
4. The listing websites most often disallow property owners from including permit data on their listings, making it impossible to quickly identify unpermitted properties
5. There is no manual way to find out how often individual properties are rented and for how much, and it is therefore very difficult to precisely calculate the amount of taxes owed by an individual property owner

Luckily, it is possible to cost-effectively outsource most of this work to new innovative companies such as Host Compliance that specialize in this area and have developed sophisticated big data technology and deep domain expertise to bring down the compliance monitoring and code enforcement costs to a minimum. In many situations, these companies can even take on all the work associated with managing the enforcement of the short-term rental regulation in return for a percentage of the incremental permitting fees, tax revenue and fine revenue that they help their local government partners collect. ***Adopting short-term rental regulation and outsourcing the administration and enforcement can therefore be net-revenue positive for the local government, while adding no or little additional work to the plates of internal staff. What's more, getting started generally requires no up-front investment, long-term commitment or complicated IT integration.***

That said, while it is good to know that adopting and enforcing short-term regulation can be net revenue positive if done in partnership with an expert firm, it is important to note that the economic benefits are only a small part of the equation and that local government leaders should also factor in the many non-economic benefits associated with managing and monitoring the rapidly growing short-term rental industry in their local communities. These non-economic benefits are often much more important to the local citizens than the incremental tax revenue, so even if the incremental revenue numbers may not seem material in the context of a local government's overall budget, the problems that unregulated and/or unmonitored short-term rentals can cause for the neighbors and other "innocent bystanders" can be quite material and should therefore not be ignored. Or as Jessica C. Neufeld from Austin, TX who suddenly found herself and her family living next to a "party house" reminds us: *"We did not buy our house to be*



*living next to a hotel. Would you buy a home if you knew a hotel like this was operating next door, if you wanted to set your life up and raise a family?”<sup>ii</sup>.*

## Conclusion

It is the responsibility of local government leaders to ensure that as few people as possible find themselves in the same unfortunate situation as Jessica and her family. In this white-paper we have outlined how to make it happen - in a revenue positive way. To find out more about how we can help your community implement simple, sensible and enforceable short-term rental regulation, feel free to visit us on [www.hostcompliance.com](http://www.hostcompliance.com) or call us for a free consultation on (415) 715-9280. We would also be more than happy to provide you with a complimentary analysis of the short-term rental landscape in your local government’s jurisdiction and put together an estimate of the revenue potential associated with adopting (or more actively enforcing) short-term rental regulation in your community.

## About the Author

Ulrik Binzer is the Founder and CEO of [Host Compliance LLC](http://Host Compliance LLC), the industry leader in short-term rental compliance monitoring and enforcement solutions for local governments.

Ulrik got the idea to found Host Compliance when he was serving on a committee appointed by his local town council to study possible ways to regulate short-term rentals in the local community. In preparation for his work on the committee, Ulrik spent countless hours researching how other municipalities had approached the regulation of short-term rentals, and it became evident that enforcing the regulations and collecting the appropriate taxes without the support of sophisticated technology was virtually impossible. As a result, Ulrik set out to build those tools and make them available to municipalities of all sizes at a fraction of the cost of what it would cost them to build and run such technology internally.

Prior to founding Host Compliance, Ulrik served as Chief Operating Officer of Work4 Labs - an 80 person Venture Capital backed technology company with offices in Silicon Valley and Europe, and Soligent Distribution LLC - the largest distributor of solar equipment to local governments and businesses in the Americas.

Before assuming executive management roles in technology companies, Ulrik served as Vice President of the private equity firm Golden Gate Capital, as a strategy consultant at McKinsey & Company and as an Officer in the Danish Army where he commanded a 42-person Platoon and graduated first in his class from the Danish Army’s Lieutenant School.

Ulrik received his M.B.A. from Harvard Business School where he was as a Baker Scholar (top 5% of his class) and earned his Bachelor of Science degree in International Business from Copenhagen Business School and New York University.



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<sup>i</sup> Google News accessed on 1/5/2016

<sup>ii</sup> New York Times article: "New Worry for Home Buyers: A Party House Next Door", October 10, 2015



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## SHORT-TERM RENTALS

### Short-Term Rentals

The City of Orlando is modifying its current code to support the “sharing economy” and allow for residents to have greater flexibility in renting out a portion of their home, condo or apartment for short term stays.

The proposed ordinance would allow for residents to “host” guests in individual bedrooms, garage apartments, etc. within all residential zoning districts; provided that there is only one booking at a time and that the resident lives on site and is present when hosting guests. The rental portion of the residence must be an accessory use to the primary use being residential housing, whether owner or long-term tenant occupied. In addition, the rental portion of the residence must be a subordinate area of the entire home, meaning the rental does not constitute a majority of the entire residence.

The ordinance requires that the resident register their rental online and pay an annual fee of \$275 for the first year (which is the normal price for a Planning Official Determination) and \$125 each year after and \$100 each year after for owner-occupied properties. Registration applications will be reviewed by the planning official. Any property that receives approval from the city must include the approval with any online listing offering the property for home sharing. (Staff is currently researching/investigating online platforms that would make this process as easy as possible).

The ordinance would “sunrise” and become effective July 1, 2018 in order to allow time for residents to become familiar with the new requirements. A community education and outreach process will begin in 1<sup>st</sup> quarter of 2018 to inform residents of this new ordinance.

Due to the increasing popularity of online short term rental websites such as Airbnb and VRBO, the City of Orlando is experiencing a growing number of homes being rented out in whole or in part for short term stays, stays generally for periods of less than 30 days.

Under its current code, most short term rentals are not allowed in the City of Orlando.

***Modifying the code to allow for residents to host guests for short term stays has many benefits, including:***

**For the city:**

- Promotes tourism within the city and allows visitors to experience our city its and unique neighborhoods.

HOME	COUNCIL	DEPARTMENTS	NEWS & EVENTS	SERVICES	RESIDENTS
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- Reduces the potential impacts that the short-term rental of entire dwelling units could have on housing affordability and the inventory of housing stock.

VISITORS	BUSINESS
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- Supports the "sharing economy" and enhances Orlando's reputation as a leader of emerging technologies and innovation.

- Brings additional tax revenue to our community as tourist development taxes are collected by the Orange County Comptroller.

**For the resident:**

- Provides an extra source of income for homeowners/tenants.
- Provides a temporary housing option for residents who may have a need for short term accommodations.

**For the visitor:**

- Provides an opportunity for visitors to have an authentic Orlando experience being hosted by a local resident.

**For the neighbor:**

- Protects the character of our neighborhoods with hosted units which limits the ability of corporations and/or investors buying multiple properties with the intention of renting them out in their entirety.
- Reduces the potential for noise, parking and traffic nuisances because the permanent resident is on site to help mitigate issues.

**FAQ**

***What will be required of residents who choose to host guests for short term stays?***

- The resident must live on site and be present when hosting guests.
- The resident would be required to register their rental online and pay the annual fee of \$275 for the first year and \$120 each year after and \$100 each year after for owner-occupied properties.
- To show proof the short term rental unit is the licensee's primary residence, licensee must show two forms of proof of residence.
- Licensee must have notarized permission from the landlord or property owner to operate a short term rental, if the licensee is not the property owner.
- Licensee would have to verify the total number of bedrooms on the property and how many will be devoted to hosted visits (to ensure that a majority of the home is not being rented).
- Special events/parties (weddings, concerts) would be prohibited.
- Only a single booking is allowed at one time. For residents who choose to host multiple guests at one time, applying to operate a bed and breakfast may be a more suitable option.

### ***Can I rent out my home or apartment in its entirety?***

While this new proposed ordinance does not allow for entire residences to be used as short term rentals, there is a previous ordinance that could accommodate some residents who want to rent out their entire home or apartment.

If your home is located in a non-residential zoning district or zoning districts where multi-family residential is allowed, you may be able to rent out your residence as a Commercial Dwelling Unit for a length of stay between seven and 30 days. A business tax receipt is required from the City's Permitting Services Division to establish this commercial use.

Using an entire residence for short term rental stays that are less than seven days is considered the operation of a hotel/motel, which is not an allowed use in most residential zoning districts.

### ***What should I do if my neighbor is renting out all or part of his or her residence and I have complaints?***

Complaints from residents about short term rentals have included too many vehicles at the residence, noise and garbage impacts and their dissatisfaction for having people coming and going often. If you have a complaint about your neighbor's short term rental operations, please contact the City's Code Enforcement Division at 407.246.2686 or [cityoforlando.net/code-enforcement](http://cityoforlando.net/code-enforcement).

### ***I thought Orange County is collecting Tourist Development Taxes on short-term rentals. Doesn't that mean short-term rentals are allowed in Orange County?***

The Orange County Comptroller has negotiated an agreement to have Tourist Development Taxes remitted on Airbnb rentals. This does not allow for the operation of Airbnb rentals in all areas of Orange County. In fact, Orange County's zoning and short term rental ordinances only allow for short-term rentals in approximately 4% of the county.

### ***Can my Homeowner's Association regulate my ability to rent my home on a short-term basis?***

If a residential property is within a homeowners association (HOA), the homeowner should check whether there are further limitations on the use of the property through their particular HOA's private Codes, Covenants and Restrictions (CC&R's).

### **More information:**

If you have additional questions about short-term rentals, please call the City Planning Division at 407.246.2269 and ask for the Planner on Call, or e-mail them at [cityplanning@cityoforlando.net](mailto:cityplanning@cityoforlando.net).

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Short-term vacation rentals have created a good deal of controversy since the start of their existence about ten years ago and have been growing at an incredible speed ever since. Short-term vacation rentals are flying under the radar less and less, but there are a variety of factors to consider when developing an ordinance or updating existing regulations. Here's six of the key ways short-term vacation rentals are impacting communities.

## 1. POSITIVE ECONOMIC IMPACT

Short-term vacation rentals can bring a positive economic impact to a city or county in several ways. For example, they can provide a city with an additional income through tax revenues. At the same time short-term vacation rental guests can benefit the community as a whole in terms of economic benefit because guests will spend their money in other visitor related amenities such as restaurants, bars and museums.

Research in San Diego

([http://www.nusinstitute.org/assets/resources/pageResources/NUSIPR\\_Short\\_Term\\_Rentals.pdf](http://www.nusinstitute.org/assets/resources/pageResources/NUSIPR_Short_Term_Rentals.pdf)) showed that \$86.4 million was spent on such activities by visitors staying in short-term vacation rentals. The total economic impact in San Diego has been estimated at \$285 million. Additionally it can help local residents make ends meet or enable young families to go on a holiday while retirees stay in their home.

## 2. LESS LONG-TERM RENTALS AVAILABLE

The scale on which short-term vacation rentals are operating is ever growing and not only designated to large urban areas anymore. Currently there are over 100 unique short-term vacation rentals in more than 1500 cities and counties in the United States.

Since short-term vacation rentals are mainly located in residential areas, by renting a short-term vacation accommodation, tourists are using up space that otherwise might be used for living. In some places this is resulting in a decrease of long-term housing availability. This effect is especially strong in large cities that are already facing problems with affordable housing like New York and San Francisco. Stories about tenants being evicted from their apartment, only later finding out they were making way for permanent short-term vacation rentals, are starting to pop up in places all over the United States. In Los Angeles ([http://blogs.findlaw.com/law\\_and\\_life/2017/02/evicted-la-renters-sue-airbnb-and-landlord.html](http://blogs.findlaw.com/law_and_life/2017/02/evicted-la-renters-sue-airbnb-and-landlord.html)) several tenants have been suing their landlords and Airbnb for evicting them out of apartments and in Burnaby (<http://www.thespec.com/news-story/6425542-evicted-tenants-shocked-to-see-home-listed-on-airbnb/>), Canada, three students were forced to leave in order for the landlord to run a full-time Airbnb rental business.

The scarcity this creates could eventually contribute to increasing housing and rental prices. For Los Angeles, a report on the relation between short-term rentals and LA's affordable housing crisis (<http://blogs.ubc.ca/canadianliteratureparkinson/files/2016/06/How-Airbnb-Short-term-rentals-disrupted.pdf>) has shown that the density of Airbnb listings overlaps with higher rental prices and lower rental vacancy. In New York (<https://www.theguardian.com/us-news/2016/jun/27/airbnb-new-york-city-housing-stock-reduction-study>) short-term vacation rentals reduced the available housing stock with at least 10%. Besides these major cities, many smaller coastal cities and mid-size cities like Long Beach City (<http://www.presstelegram.com/business/20170324/should-long-beach-allow-airbnb-and-other-short-term-rentals>) and Madison (<https://www.wpr.org/madison-could-ink-deal-airbnb-collect-room-taxes>) are starting to express concerns about this issue as well.

### **3. NEIGHBORHOOD CHANGES**

Living next door to a short-term vacation rental can range from mildly concerning to completely life altering. Visitors usually rent the accommodation only for a couple of days, thus neighbors see new people coming and going every few days, especially when the density of short-term vacation rentals in the area is high. Related complaints about trash, parking issues and noise disturbance continue to worry local governments. A recent article about Los Angeles (<http://www.nbclosangeles.com/news/local/I-Team-Investigation-Short-Term-Rentals-Property-Airbnb-415128373.html>) exemplifies this with stories about short-term vacation rentals being turned into party houses with nightmarish results for neighbors.

At the same time local residents worry the penetration of short-term vacation rentals in their neighborhood will change the character and transform the quality of life of the area. This has already led to heavy protests in the past in big cities like New York (<https://www.theverge.com/2016/10/26/13421874/airbnb-rally-law-home-sharing-new-york-governor-cuomo>) and San Francisco. (

In-airbnb-protest-20151102-story.html) Smaller cities such as Santa Monica (<https://qz.com/842996/what-happens-when-a-30-billion-startup-stops-being-nice-and-starts-being-real/>) are also dealing with such complaints. This leaves local governments with the incredibly difficult task of finding ways to regulate short-term vacation rentals in such a way that they protect neighborhoods while balancing a home-owners property rights.

#### **4. INCREASED TOURISM ACTIVITY**

For some cities, Airbnb and other short-term vacation rental platforms are a way to boost the local tourism sector. Because of the price advantage of those rentals, less popular tourist destinations become more attractive with the arrival of short-term vacation rentals. The City of Brevard (<http://wlos.com/news/local/city-of-brevard-approves-short-term-rentals>) recently announced that it is going to approve short-term vacation rentals in the hope to attract tourists as they currently lack a good amount of hotels. And even cities that already have an established tourist industry are benefiting from short-term vacation rentals. A study on the effects of the sharing economy in Idaho ([http://ac.els-cdn.com/S0160738315300050/1-s2.0-S0160738315300050-main.pdf?\\_tid=a380fffc-13ce-11e7-9f7d-00000aacb361&acdnat=1490716568\\_d9f4bc7720b430b62e03bdca7922aeb2](http://ac.els-cdn.com/S0160738315300050/1-s2.0-S0160738315300050-main.pdf?_tid=a380fffc-13ce-11e7-9f7d-00000aacb361&acdnat=1490716568_d9f4bc7720b430b62e03bdca7922aeb2)) found a direct correlation between short-term rentals and job creation in the tourism sector. In San Diego short-term vacation rentals are helping to support 1,842 jobs.

#### **5. UNFAIR PLAYING FIELD FOR TRADITIONAL LODGING PARTNERS**

On the other side of the argument, short-term vacation rentals are considered disruptive for the traditional lodging industry. The hotel industry claims that the business models of short-term vacation rental platforms offer unfair economic advantages in two distinct ways. First of all, short term vacation rentals have do not have to pay for staff and aren't regulated like hotels which increases costs substantially. This allows short-term rentals to offer lower rates compared to traditional tourist accommodations. A second factor is that short-term vacation rentals are usually not charged with tourist taxes which is further deepening the unequal competition. A report from the American Hotel & Lodging Association (<http://www.pamplinmedia.com/pt/9-news/349298-228704-hotel-industry-sounds-alarm-about-airbnb>) shows that in cities like Portland, Airbnb-style rentals have increased vastly both in revenue and the amount of hosts with multiple units. Because short-term vacation rentals are not treated as similar businesses this could form a threat to the hotel industry. A study from scholars at Boston University and the University of Southern California (<http://people.bu.edu/zg/publications/airbnb.pdf>) showed that mainly lower-end hotels in Texas are already suffering from the increase in short-term vacation rental listings.

## 6. MISSED TAX REVENUES

Since short-term vacation rentals are not taxed in many cities, local governments are missing out on millions of dollars. When allowing but regulating short-term vacation rentals, local governments can increase their revenue through taxes, permits and business licenses. For example, Mill Valley, a small California community and a Host Compliance customer requires hosts to purchase a business license and pay a registration fee. As a result the city has collected nearly \$96,000 in taxes since the program began, in addition to registration fees (<http://www.marinij.com/article/NO/20170308/NEWS/170309829>). On the other side, it's estimated that Boston (<https://www.bostonglobe.com/business/2016/12/02/airbnb-says-state-cities-lost-out-missed-tax-revenue/f7Pk1O553XVzoFHDwskarJ/story.html>) is currently missing out \$4.5 million in tax revenues.

## CONCLUSION

It's important to know how short-term vacation rentals are impacting your community. Even though this new accommodation brings substantial economic benefits to communities, when unregulated, Airbnb-style rentals can put pressure on communities and the accommodation industry. With the immense growth of short-term vacation rentals in every community, ignoring the impact, whether positive or negative, is not an option anymore. Local governments need to work towards effective and enforceable regulations to protect communities, neighborhood character and housing availability.s.

If you are looking for ways to effectively identify and regulate short-term vacation rentals in your community, Host Compliance offers a comprehensive suite of solutions used by local governments across North America to solve their short-term vacation rental problems. You can learn about our solutions and request a complimentary short-term rentals assessment here (</solutions>).

*See our complete library of short-term rental intro articles here (</short-term-rentals-what-you-need-to-know>)*

# SHORT-TERM RENTAL HOUSING RESTRICTIONS

## White Paper

PREPARED BY



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## **PREFACE**

This white paper on *Short-Term Rental Housing Restrictions* has been prepared by Robinson & Cole LLP in its capacity as national consultant to NAR. The paper is one in a series of white papers that NAR requests be prepared from time to time in order to focus on a particular smart growth-related issue that has arisen with sufficient frequency in communities around the country to merit a more in-depth analysis.

The analysis of short-term rental housing restrictions in this paper is provided by NAR under its Smart Growth program to help REALTORS<sup>®</sup> at the state and local level better understand the issues involved in these types of restrictions, and to tailor strategies, as appropriate, to address short-term rental housing regulatory initiatives in their communities.

Brian W. Blaesser  
**Robinson & Cole LLP**  
*September 2011*

## SECTION 1: INTRODUCTION

### 1.1 PURPOSE AND SCOPE OF PAPER

This paper was prepared at the request of the National Association of REALTORS® (NAR). The purpose of this paper is to (1) explain the problem of short-term rental housing restrictions; (2) categorize and describe the different approaches taken by local governments to regulate short-term rental housing in their communities; (3) analyze the issues raised by these different regulatory approaches; (4) provide Realtors® with ways to address these issues; and (5) outline “best practices” approaches to short-term rental housing that Realtors® can use in discussing the issue with local government officials.

### 1.2 KEY TERMS

The term “short-term rental housing” typically means a dwelling unit that is rented for a period of less than thirty consecutive days. In general, short term rental housing differs from bed & breakfasts, hotels, motels, and other “lodging” uses by providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Although bed & breakfasts often are similar in appearance and location to many short-term rentals, they are distinguishable by the presence of the owner/operator on-site.<sup>1</sup> Boarding houses differ from short-term rentals by having multiple rooms or units for rent and common kitchen and dining facilities that are shared by the occupants.<sup>2</sup> Boarding houses also tend to be less transient than short-term rentals.<sup>3</sup> Similarly, hotels and motels are distinguishable from short-term rentals by having separate entrances and an on-site management office.<sup>4</sup> In some communities, short-term rental housing may be referred to as vacation rentals, transient rentals, or resort dwelling units.

Terms that appear in **bold typeface** are defined in the Glossary found at the end of this paper.

## SECTION 2: OVERVIEW OF SHORT-TERM RENTAL RESTRICTIONS

### 2.1 PURPOSE – THE MUNICIPAL PERSPECTIVE

Many communities around the country, both vacation destination communities and non-vacation communities, have implemented some form of short-term rental housing regulation. Below is an overview of the most common reasons cited by communities for regulating short-term rental housing.

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<sup>1</sup> See Nate Hutcheson, “Short-Term Vacation Rentals: Residential or Commercial Use?,” *Zoning News* (March 2002, American Planning Association) (hereinafter “APA Report”).

<sup>2</sup> See APA Report at 5.

<sup>3</sup> See APA Report at 5.

<sup>4</sup> See APA Report at 5.

### **2.1.1 Protection of Neighborhood Environment**

The most commonly cited municipal purpose for regulating short-term rental housing is to protect the character of existing residential neighborhoods. Often these communities are responding to complaints from permanent residents about the disturbances that may be caused by short-term tenants, including excessive noise, late night parties, trespassing, increased traffic, and other disruptive activities. Generally speaking, the rationale is that vacationers and guests who do not have ties to the local community are more concerned with maximizing their fun than they are with being a good neighbor. This rationale is evident in the “resort dwellings” ordinance adopted by the City of Venice, Florida, which states:

[The] City council finds that resort dwelling rental activities in single-family neighborhoods affects the character and stability of a residential neighborhood. The home and its intrinsic influences are the foundation of good citizenship. The intent of these regulations is to prevent the use of single-family residences for transient purposes in order to preserve the residential character of single-family neighborhoods.<sup>5</sup>

### **2.1.2 Protection of Physical Characteristics**

Some communities also cite the need to protect the physical characteristics of their residential neighborhoods. The underlying rationale is that short-term rental properties generally are not owner-occupied and therefore are less likely to be cared for to the same degree as permanent residences. At least, in theory, absentee property owners are presumed to be less diligent about the types of regular and routine maintenance tasks typically associated with home ownership, such as lawn maintenance, tree and shrub pruning, and exterior painting.

### **2.1.3 Revenue**

For many communities, particularly those with a robust tourist industry, short-term rentals represent a potentially significant source of tax revenue. In Texas, for example, the Hotel Occupancy Tax statute broadly defines the term “hotel” to include any building that offers sleeping accommodations for consideration, including a “tourist home” or “tourist house,” and imposes a six percent tax on the price paid for such accommodations.<sup>6</sup> Moreover, the Municipal Hotel Occupancy Tax statute authorizes Texas cities, towns and villages to impose and collect an additional nine percent tax on hotels, including short-term rental properties.<sup>7</sup> The potential revenue available to municipalities with authority to tax short-term rentals is exemplified by a 2011 study prepared by the city auditor for Austin, Texas, which estimated that the city could gain \$100,000 to \$300,000 annually by collecting taxes on short-term rental properties.<sup>8</sup> Communities that desire to collect such taxes may impose registration or licensing requirements as a means of identifying properties that are being used for short-term rentals and are therefore subject to taxation.

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<sup>5</sup> Venice, FL Land Development Code § 86-151.

<sup>6</sup> See Texas Code §§ 156.001, 156.052. Accommodations of “at least 30 consecutive days, so long as there is no interruption of payment for the period,” are exempt from the tax. *Id.* § 156.101.

<sup>7</sup> See Texas Code § 351.003.

<sup>8</sup> See “City of Austin begins work on short-term rental regulations; Planning Commission to address safety, tax revenue concerns,” (Source: impactnews.com: Central Austin, April 22, 2011).

### **2.1.4 Fairer Competition with Licensed Lodging**

Short-term rental restrictions may also be viewed as a means of leveling the playing field between the short-term rental industry and competing overnight lodging uses that may be specifically regulated under state or local law, such as hotels and bed and breakfasts. In some cases, the hotel industry has lobbied for the adoption of such regulations on the grounds that short-term rentals are functionally the same as hotel units and therefore should either be taxed and regulated like hotels, or prohibited. At a June 2011 meeting of the Planning Board of Buncombe County, North Carolina, for example, several hoteliers cited unfair competition in arguing against the potential repeal of a ban on vacation rentals in the county's more restrictive residential zoning districts. One industry representative testified that hotels "spend many, many hours and many, many dollars abiding by all the regulations that [hotels] are required to abide by and that many do not apply to short-term rentals."<sup>9</sup>

### **2.1.5 Protection of Renter Safety**

A less commonly cited reason for the adoption of short-term rental regulations is the protection of renter safety. The rationale is that operational restrictions (e.g., occupancy limits based on septic system capacity) and inspection requirements are necessary to ensure the safety of occupants of short-term rental units. The City of Big Bear Lake, California, for example, has a "transient private home rentals" ordinance that is intended, in part, "to ensure . . . that minimum health and safety standards are maintained in such units to protect the visitor from unsafe or unsanitary conditions."<sup>10</sup>

## **2.2 TYPES OF SHORT-TERM RENTAL RESTRICTIONS**

### **2.2.1 Prohibition**

From the perspective of a short-term rental property owner, the most severe form of restriction is an outright ban on short-term rentals. A short-term rental prohibition may be limited to specific neighborhoods or zoning districts, or may be community-wide.

### **2.2.2 Geographically-Based Restrictions**

Communities that choose to allow short-term rentals often use their zoning authority to regulate the use on a geographic basis. For example, Venice, Florida regulates short-term rental properties (referred to locally as "resort dwellings") only in the city's Residential Estate (RE) and Residential Single Family (RSF) zoning districts.<sup>11</sup> Similarly, Maui County, Hawaii permits transient vacation rentals only within certain business zoning districts and certain designated

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<sup>9</sup> "Buncombe planners wade into Asheville-area vacation rental issue again; County debates relaxing the rules," *The Asheville Citizen-Times*, June 6, 2011.

<sup>10</sup> City of Bear Lake, CA Municipal Code § 17.03.310(A).

<sup>11</sup> See generally Venice, FL Land Development Code § 86-151.

“destination resort areas,” including the Wailea, Makena, Kaanapali, and Kapalua Resort Areas.<sup>12</sup>

### 2.2.3 Quantitative and Operational Restrictions

Other communities that allow short-term rentals may choose to implement a cap on the number of short-term rental permits that may be issued. Such an approach constitutes a compromise between short-term rental owners who argue that they have the right to rent their properties on a short-term basis, and opponents who argue that short-term rentals should be prohibited as an unlawful commercial use in a residential neighborhood. Quantitative restrictions may take the form of a fixed limit on the total number of short-term rental permits that may be issued at any given time. The City of Santa Fe, New Mexico, for example, authorizes the Land Use Director to issue “up to 350 short term rental permits” for residential properties that do not otherwise qualify for permits as an accessory dwelling unit, owner-occupied unit, or unit located within a “development containing resort facilities.”<sup>13</sup> Similarly, the City of Cannon Beach, Oregon maintains a 92 permit cap on the number of transient rental permits that will be issued by the city.<sup>14</sup> Alternatively, a community may implement a proximity restriction that prohibits a short-term rental property from being located within a certain distance of another short-term rental property. The “Residential Vacation Rentals” ordinance of San Luis Obispo County, California, for example, provides:

[N]o residential vacation rental shall be located within 200 linear feet of a parcel on the same block on which is located any residential vacation rental or other type of visitor-servicing accommodation that is outside of the Commercial land use category.<sup>15</sup>

Another type of quantitative restriction is that in the Mendocino County, California zoning ordinance, which requires the county to maintain a ratio of “thirteen (13) long term residential dwelling units to one (1) single unit rental or vacation home rental.”<sup>16</sup>

Many short-term rental regulations incorporate performance-type standards for the operation of short-term rental properties. Below are examples of these types of standards that are frequently incorporated into short-term rental regulations:

- **Maximum Occupancy Limits:** This standard limits the maximum overnight occupancy of short-term rental properties based on the number of bedrooms in the home (for example, the Isle of Palms, South Carolina limits overnight occupancy to two persons per bedroom plus an additional two persons<sup>17</sup>) and/or on the septic capacity of the property. In Sonoma County, California, for example, the maximum overnight occupancy of a vacation rental property on a conditional septic system is “equal to the design load of the septic system.”<sup>18</sup>

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<sup>12</sup> See Maui County, HA County Code § 19.38.030(B).

<sup>13</sup> See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(i).

<sup>14</sup> See City of Cannon Beach, OR Zoning Code § 17.77.020(F).

<sup>15</sup> San Luis Obispo County, CA Code § 23.08.165(c).

<sup>16</sup> Mendocino County, CA Code § 20.748.020(A).

<sup>17</sup> See Isle of Palms, SC City Code § 5-4-202(1).

<sup>18</sup> See Sonoma County, CA Code of Ordinances § 26-88-120(f)(2).

- Rental Period Restrictions: This restriction places a limit on the number of times a property may be rented for short-term occupancy. The City of Santa Fe, New Mexico, for example, limits short-term rental units to a maximum of 17 rental periods per calendar year and permits no more than one rental within a seven consecutive day period.<sup>19</sup>
- Parking Requirements: This standard may require that the short-term rented property provide more off-street parking than comparable properties that are occupied by owners or long-term tenants. Santa Fe also specifically prohibits short-term rental occupants from parking recreational vehicles on site or on the street.<sup>20</sup>
- Noise Level Limits: This standard applies specific noise level limitations to activities associated with short-term rental properties. Sonoma County’s vacation rental ordinance, for example, includes an “Hourly Noise Metric” table that imposes specific quantitative noise level limits on vacation rentals during “activity hours” (9:00 a.m. to 10:00 a.m.) and “quiet hours” (10:00 p.m. to 9:00 a.m.).<sup>21</sup>
- Required Postings: This standard requires owners to prominently display a copy of the operational restrictions and contact information for the owner, manager, or other representative of the rental property.<sup>22</sup> Owners may also be required to incorporate the operational restrictions in all rental agreements.
- Emergency Access Requirements: If located behind a locked gate or within a gated community, short-term rental units may be required to provide a gate code or lockbox with keys to local police, fire, or emergency services departments.<sup>23</sup>
- Mandatory Designated Representatives: This standard requires that the short-term renter provide a current 24-hour working phone number of the property owner, manager, or other designated representative to local officials and to property owners within a certain distance of the rental unit. Some communities also require that the designated representative be available during all rental periods within a certain distance (e.g., a one-hour drive) of the rental property.<sup>24</sup>
- Trash and Recycling Facility Storage: This standard requires that trash and recycling bins be stored in a location that is not visible from public rights-of-way. Section 5.25.070 of the City of Palm Springs, California vacation rental ordinance, for example, states: “Trash and refuse shall not be left stored within public view, except in proper containers for the purpose of collection by the collectors and between the hours of five a.m. and eight p.m. on scheduled trash collection days.”<sup>25</sup>

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<sup>19</sup> See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(ii).

<sup>20</sup> See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(ii).

<sup>21</sup> See Sonoma County, CA Code of Ordinances § 26-88-120(f)(6).

<sup>22</sup> See, e.g., Venice, FL Land Development Code § 86-151(2)(b)(1).

<sup>23</sup> See, e.g., Sonoma County, CA Code of Ordinances § 26-88-120(f)(14).

<sup>24</sup> See, e.g., Sonoma County, CA Code of Ordinances § 26-88-120(f)(13).

<sup>25</sup> Palm Springs, CA Municipal Code § 5.25.070(g).

## 2.2.4 Registration/Licensing Requirements

Owners who intend to offer their property for use as a short-term rental unit may be required to register their property with the local government. Garrett County, Maryland, for example, requires owners to register their property with the Office of Licensing and Enforcement Management and to pay a one-time fee as condition precedent to receiving a “transient vacation rental unit license” from the County.<sup>26</sup> Short-term rental licenses often are valid only for a one- or two-year period, requiring property owners to renew the licenses—and to pay associated fees—on a regular basis.

Many communities require short-term rental properties to pass certain inspections prior to the issuance of a permit, license, or renewal. Tillamook County, Oregon, for example, as a condition to the issuance of a short-term rental permit, requires property owners to obtain a certification from a certified building inspector evidencing compliance with all applicable operational standards, including minimum fire extinguisher and smoke detector requirements, emergency escape and rescue standards, and structural requirements.<sup>27</sup>

## 2.3 ENFORCEMENT

Communities typically enforce their short-term rental regulations (a) in accordance with a generally applicable enforcement provision contained in the code of ordinances or zoning ordinance, or (b) through a specific enforcement provision incorporated into the short-term rental regulations. Article 9 of the Isle of Palms, South Carolina Code of Ordinances is one example of a short-term rental ordinance that contains no specific enforcement provision, but is enforced under a generally applicable penalty provision.<sup>28</sup> Under the Isle of Palms Code of Ordinances, violation of the short-term rental ordinance is subject to the same penalties and procedures as a violation of any other provision the zoning code. Potential penalties for a violation are established under Section 5-4-7 of the Code of Ordinances, which states:

In case a structure or land is or is proposed to be used in violation of this chapter, the Zoning Administrator may, in addition to other remedies, issue and serve upon a person pursuing such activity or activities a *stop order* requiring that such person immediately cease all activities in violation of this chapter.

Any person violating any of the provisions of this chapter shall be deemed guilty of a *misdemeanor* and shall for each violation, upon conviction thereof, be punished as provided in section 1-3-66. Each day that a violation continues shall constitute a separate offense.<sup>29</sup>

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<sup>26</sup> See Garrett County, MD Code of Ordinances § 160.03(A).

<sup>27</sup> See Tillamook County (OR) Short Term Rental Ordinances, Sections 6 (Standards) and 9.A.b (Short Term Rental Permit Application Requirements).

<sup>28</sup> See generally Isle of Palms, SC City Code §§ 5-4-201 to -206 (Short-Term Rentals) and § 5-4-7 (Violations and Penalties).

<sup>29</sup> Isle of Palms, SC City Code § 5-4-7 (Emphasis added).

By contrast, the short-term rental ordinances of Sonoma County, California and Santa Fe, New Mexico contain specifically applicable enforcement provisions. Under Section 26-88-120(g) of the Sonoma County vacation rental ordinance, individuals who register an initial complaint about a vacation rental property are directed to the contact person identified in the zoning permit or use permit issued for the property. Subsequent complaints are addressed to code enforcement officials who are responsible for conducting an investigation to determine whether there was a violation of a zoning or use permit condition. Code enforcement may accept neighbor documentation consisting of photos, sound recordings and video as proof of an alleged violation. If code enforcement verifies that a violation has occurred, then a notice of violation is issued and a penalty may be imposed in accordance with Chapter 1 of the Sonoma County Code. In addition, under Section 26-88-120(g)(1), code enforcement officers are also given the discretion to schedule a revocation hearing with the board of zoning adjustment. If a vacation rental permit is revoked, then a new zoning or use permit for a vacation rental may not be reapplied for or issued for a period of at least one year.<sup>30</sup> Santa Fe's short term rental unit ordinance includes a specific provision that authorizes the city to revoke a short term rental permit upon conviction for a third violation of the ordinance.<sup>31</sup>

## **SECTION 3: IMPACTS OF SHORT-TERM RENTAL RESTRICTIONS**

### **3.1 IMPACTS ON RENTAL PROPERTY OWNERS**

#### **3.1.1 Rental Income**

For some rental property owners, the adoption of short-term rental restrictions may result in the *loss* of rental income altogether. The most obvious example is an owner of property located in a zoning district where short-term rentals are no longer allowed under a local ordinance. In areas where short-term rentals are allowed, other property owners might face the loss of rental income due to their inability, for financial or other reasons, to satisfy the requirements for obtaining a permit, such as minimum off-street parking or structural requirements. As discussed in Section 5.3.6 below, some short-term rental regulations might also cause an owner to lose rental income because of suspension or revocation of a rental permit, even if the reason for suspension or revocation is beyond the owner's control (e.g., tenant behavior).

There are several ways in which a short-term rental restriction might also result in a *decrease* in rental income. An ordinance that restricts the number of times a property may be rented per year could have a significant impact on the property's income potential. Santa Fe, New Mexico, for example, limits short-term rentals to 17 rental periods per year.<sup>32</sup> A maximum overnight occupancy provision could also negatively affect the income potential of a rental property by reducing the number of guests to whom a home may be rented. Rental restrictions can also cause a reduction in rental income where they have the effect of narrowing the field of potential tenants or discouraging vacationers from renting a home. For example, an ordinance that prohibits

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<sup>30</sup> See generally Sonoma County, CA Code of Ordinances § 26-88-120(g).

<sup>31</sup> See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(iv).

<sup>32</sup> See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(ii)(B).



short-term occupants from parking a recreational vehicle on site or on the street might deter families who travel by RV from renting a home in Santa Fe.<sup>33</sup>

### 3.1.2 Property Values

Short-term rental restrictions can affect property values in different ways. Generally speaking, all else being equal, if identified negative impacts of short-term rentals in a district or neighborhood are reduced or eliminated by short-term rental housing restrictions, property values may increase. On the other hand, the added limitations on the use of properties that short-term rental housing restrictions impose may cause property values in the district or neighborhood to decrease. The precise impact that short-term rental restrictions have on property values will depend on various factors, including the general character of the community (e.g., vacation destination versus non-destination community), the precise terms of the ordinance, local and national economic conditions, and local real estate market conditions.

#### 3.1.2.1 Existing Short-Term Rental Properties

In general, the value of a home that was used as a short-term rental prior to the adoption of restrictions, but is either prohibited or restricted from future use as a short-term rental, can be expected to *decrease*. That is particularly true in vacation destination communities, where homeowners often purchase second homes as investment properties.<sup>34</sup> These potential buyers often plan to use the second home as a short-term rental property until they retire or otherwise become able to maintain the property as their full-time residence.<sup>35</sup> Such buyers would tend to be less interested in purchasing in an area where the short-term rental market is highly uncertain or is constrained by burdensome regulations.

In some circumstances, it is conceivable that a short-term rental ordinance could increase the value of those homes that were used as short-term rentals prior to the adoption of the restrictions *and* become lawfully licensed for use under the new regulations. Under the general economic principle of supply and demand, if an ordinance has the effect of reducing the *supply* of short-term rental properties and the *demand* for short-term rental properties rises or remains constant, then the value of individual properties licensed as short-term rental properties after the adoption of regulations, can be expected to rise.

#### 3.1.2.2 Properties Not Previously Used as Short-Term Rental Properties

The impact of short-term rental restrictions on the value of properties that were not used as short-term rentals prior to adoption of the restrictions will also vary. The value of a property that becomes licensed as a short-term rental for the first time under a new ordinance conceivably could *increase* if the quantity of short-term rental properties on the market falls as a result of the

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<sup>33</sup> Section 14-6.2(A)(6)(a)(ii)(E) of the Santa Fe Short Term Rental Ordinance states: “Occupants shall not park recreational vehicles on site or on the street.”

<sup>34</sup> See National Association of Realtors®, *Nearly One in Seven Homebuyers Owned or Bought A Second Home During First Quarter*, July 13, 2003 (accessed at <http://www.realtor.org/publicaffairsweb.nsf/Pages/SecondHomeReport?OpenDocument>).

<sup>35</sup> See *id.*

ordinance. In residential neighborhoods where the existence of short-term rentals is considered a negative, an ordinance that prohibits future short-term rental activity in those neighborhoods could positively affect the value of homes in these locations.

### **3.1.3 Operational Costs**

Short-term rental regulations tend to increase the cost of owning and operating a rental property in a number of ways. The regulations typically require owners to pay an up-front registration or permit fee and may also require payment of additional licensing fees on an annual or other recurring basis. Inspection requirements also add to the cost of operating a short-term rental since, in most cases, the inspections are performed at the owner's expense. Performance standards may also require an owner to undertake costly improvements in order to obtain a short-term rental permit. An owner may be required to expand an existing driveway in order to satisfy a minimum parking requirement or to upgrade electrical or sewer systems in order to qualify for a permit. In addition, a rental property owner who resides out of state may have to hire a property manager in order to satisfy a requirement that a designated representative be available at all times and within a certain proximity of the unit during any rental period.

### **3.1.4 Nonconforming Use Status**

A property that was used as a short-term rental prior to the adoption of an ordinance that no longer allows short-term rentals may become a **nonconforming use** under state and local zoning laws. Although state and local zoning laws typically allow nonconforming uses to continue, the right to alter or expand a nonconforming use is usually limited and often requires the issuance of a special permit, or an equivalent form of zoning relief, from the local planning commission or board of appeals. In addition, a nonconforming use that is discontinued for a specific period of time (typically one or two years) may be deemed abandoned, and thereafter prohibited from resuming at a future date.

## **3.2 COMMUNITY IMPACTS**

### **3.2.1 Local Real Estate Market**

In vacation destination communities, many property owners depend on the income gained from short-term rentals to pay their mortgages, real estate taxes, association dues, and other expenses. If that income is taken away or severely reduced by short-term rental restrictions, the only alternative for those homeowners might be to sell their homes immediately in order to avoid foreclosure or a distressed sale. A widespread ban on short-term rentals that results in a substantial number of homes being sold or foreclosed upon may flood the market, causing property values to fall and remain depressed for a period of time.

### **3.2.2 Tourism**

Short-term rental restrictions may negatively impact local tourism in at least two ways. First, they may affect the occupancy rates of vacation rentals by increasing the per-person cost of short-term rentals because they limit the maximum occupancy of a short-term rental unit. Short-

term rental restrictions may also cause rental property owners to increase their rental rates and minimum security deposits in order to cover the increased cost of operating a short-term rental and the risk of incurring a fine or having their rental licenses revoked or suspended. All else being equal, the higher rental rates paid by smaller groups of tenants, increase the per-person cost of short-term rentals in communities with short-term rental ordinances.

Second, tourists who become aware of the new restrictions may perceive them as being motivated by, and evidence of, an “anti-tourist” sentiment among full time residents of the community. Regulations that single out short-term rentals for different treatment may implicitly brand short-term renters as being potentially disruptive even though an individual tenant may have done nothing wrong. Provisions that allow random inspections of short-term rentals without imposing reasonable restrictions on the time or manner of those inspections may be perceived as an invasion of privacy and an unreasonable disruption of a family vacation. A perceived anti-tourist sentiment may ultimately discourage tourists from vacationing in that community.

A January 2010 report prepared by the Napa Valley Vacation Rental Alliance, argued that the availability of short-term rental properties could determine where a family or groups of friends vacationing together chooses to stay. The report states:

Throughout the world, some travelers prefer private dwellings to hotels. For instance, those traveling as a family or group of friends often want spacious accommodations and kitchens. This market segment will not substitute conventional lodging if vacation rentals are not provided, they will simply go elsewhere. Thus, by eliminating vacation rentals, Napa County would deter a substantial number of visitors who currently spend on restaurants, wine, attractions and services and who would instead spend for leisure outside our County.<sup>36</sup>

The 2008 study “Economic Impact of Transient Vacation Rentals (TVRs) on Maui County”<sup>37</sup> commissioned by the Realtors<sup>®</sup> Association of Maui (the “Maui TVR Study”) reached a similar conclusion. Acknowledging that “the TVR industry is concerned about . . . the potential enactment of legislation meant to marginalize [the TVR] industry, and the potential economic consequences of such policies,” the Maui TVR Study concluded:

The extent of the loss of the TVR industry due to government regulations depends to what extent TVR visitors substitute an alternative Maui County accommodation type to TVRs if they are unavailable or not sufficiently available to meet the current and expected future demand level for their accommodation type. In a global market place with alternatives to Maui destinations offering a literal potpourri of accommodation experiences, the modern, well-informed and sophisticated visitor can find the accommodations experience that best fits their tastes and preferences.

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<sup>36</sup> Napa Valley Vacation Rental Alliance (NVVRA): A Coalition of Napa County Stakeholders (prepared for Napa County by Napa Valley Vacation Rental Alliance (NVVRA), Jan. 2010) (available on-line at <http://www.white.com/nvvra/media/WHY%20CODIFYING%20VACATION%20RENTALS%20NOW%20IS%20OOD%20PUBLIC%20POLICY.pdf>).

<sup>37</sup> “Economic Impact of Transient Vacation Rentals (TVRs) on Maui County,” prepared by Dr. Thomas Loudat & Dr. Prahlad Kasturi for the Realtors<sup>®</sup> Association of Maui (Jan. 8, 2008) (hereinafter the “Maui TVR Study”).

Based on the increasing market share of TVRs on Maui from 2000 to 2006 relative to other accommodation types one can reasonably surmise that the modern visitor increasingly prefers a TVR or its equivalent experience. Thus, even though elimination of Maui TVRs may not result in the loss of all TVR visitors who may substitute an alternative Maui County accommodation type yet available, we would still expect a significantly negative economic impact in Maui County if TVRs are eliminated or significantly reduced.<sup>38</sup>

### **3.2.3 Local Economy**

Local economies that lean heavily on the tourist economy are more susceptible to the potential impacts of short-term rental restrictions. Even a slight impact on tourism in these communities can have a significant negative effect on the viability and success of restaurants, retail establishments, and other local businesses that provide services to tourists. The potential dollar impacts of a reduction in visitor numbers due to a short-term rental restriction is illustrated by the daily spending calculations of the Maui TVR Study, which calculated that transient vacation rental visitors spent an average of \$159.16 per day in Maui County.<sup>39</sup> Based on 2006 transient vacation rental visitor data (105,967) and a 6.85 day average length of stay, the study concluded that transient vacation rentals produced more than \$115 million in total revenue from lodging, food and beverage, entertainment, shopping, and other county businesses and services.<sup>40</sup>

### **3.2.4 Tax Revenue**

Short-term rental restrictions can have a positive effect on tax revenue if communities are authorized by state law to impose and collect a tax on short-term rentals. Cities, towns and villages in Texas, for example, are authorized by the Municipal Hotel Occupancy Tax statute to impose and collect a nine percent tax on the price paid for short-term rentals.<sup>41</sup> In 2011, the City of Austin estimated that it could gain an additional \$100,000 to \$300,000 in tax revenue by taxing short-term rental properties.<sup>42</sup>

At the same time, however, short-term rental restrictions that negatively affect local tourism could cause sales tax revenue to decrease if restaurant and retail sales are down due to diminished tourism.

### **3.2.5 Affordable Housing**

Short-term rentals can affect housing costs in a community. When property owners elect to rent their homes on a short-term basis rather than renting on a longer-term basis (e.g., by the season or by the year), “they essentially squeeze the supply of housing, pushing up the demand, and subsequently, the cost” of housing in the community.<sup>43</sup> In some cases, allowing short-term rentals may fuel speculation in rising housing markets by allowing investors to cover the

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<sup>38</sup> Maui TVR Study at 1-2.

<sup>39</sup> See Maui TVR Study at 16.

<sup>40</sup> See Maui TVR Study at 16-17

<sup>41</sup> See Texas Code § 351.003.

<sup>42</sup> See “City of Austin begins work on short-term rental regulations; Planning Commission to address safety, tax revenue concerns,” (Source: impactnews.com: Central Austin, April 22, 2011).

carrying costs of a house for a period of time while the property appreciates in value and then sell it for a profit.<sup>44</sup> Tourist communities, in particular, may be affected if the workers in low-paying service and tourism related jobs can no longer afford to live in the community or within a reasonable commuting distance.<sup>45</sup>

### **3.2.6 Governmental Administrative Costs**

Short-term rental restrictions create additional administrative burdens on local government, including the processing of permit, licensing and registration applications. Local building officials are likely to be faced with an increased volume of required inspections. Code enforcement personnel and the police officers may be required to assume additional enforcement duties under a short-term rental ordinance. The financial burden of administering a short-term rental ordinance may weigh heavily on vacation-destination communities, where the a high volume of short-term rental properties may require local government to hire additional staff or pay increased overtime costs to current staff in order to implement the short-term rental program.

## **3.3 IMPACTS ON RENTERS**

### **3.3.1 Rental Fees**

As discussed above, the adoption of short-term rental restrictions may cause rental property owners to increase rental rates as a means of recovering licensing and permit fees, inspection and other related costs. If regulations expose a property owner to the risk of incurring a fine or having the owner's rental license suspended or revoked, the owner may also increase the minimum security deposit as a means of deterring tenants from engaging in behavior that might violate the short-term rental regulations.

### **3.3.2 Inventory of Short-Term Rental Units**

Short-term rental restrictions can also reduce the inventory of short-term rental units in a community in various ways. For example, zoning regulations may prohibit short-term rentals in single-family residential zoning districts or within certain areas or neighborhoods. An owner who successfully operated a short-term rental property without complaint prior to the adoption of licensing requirements may be barred from continuing the use if the property does not conform to the new licensing criteria. More generally, owners may simply decide they do not want to assume the increased cost and risk of continuing to use their property as a short-term rental, and withdraw their properties from the inventory of short-term rental in the community.

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<sup>43</sup> APA Report at 2.

<sup>44</sup> *See id.*

<sup>45</sup> *See id.*

### 3.4 UNINTENDED CONSEQUENCES OF SHORT-TERM RENTAL RESTRICTIONS

#### 3.4.1 “Underground Market” for Short-Term Rental Units

Short-term rental restrictions that impose high permit and licensing fees, onerous inspection requirements, and performance standards that are difficult or costly for owners to satisfy might have the unintended effect of creating an underground market for short-term rentals, in which owners continue to rent their properties without obtaining the required permits. Owners who depend on rental income to pay their mortgages to pay the maintenance costs of a second home may be willing to risk incurring fines and other penalties if an ordinance creates obstacles that cannot be overcome or that may make it economically infeasible to obtain a rental permit.<sup>46</sup>

#### 3.4.2 Uncertainty in the Short-Term Housing Market

A short-term rental regulation that authorizes the suspension or revocation of a short-term rental permit can also introduce a degree of uncertainty in the short-term rental housing market. Vacation travelers often reserve short-term housing accommodations several months in advance of a planned vacation, particularly when the stay is planned during a destination’s peak visitation period. Under those circumstances, for example, it is conceivable that a family may make a reservation and pay a deposit several months in advance of a holiday ski vacation only to discover later that the home they had reserved is no longer available because its short-term rental permit was suspended or revoked. In some cases, by the time a vacation home renter makes that discovery, it may be too late to find suitable alternative short-term housing, leaving the vacationer with a negative impression of the local community—an impression that the vacationer is likely to share with others.

## SECTION 4: LEGAL ISSUES RAISED BY SHORT-TERM RENTAL RESTRICTIONS

### 4.1 AUTHORITY TO REGULATE

In general, short-term rental restrictions are typically adopted under the specific authority of a state **zoning enabling statute** or the general **police power** delegated to local governments by the state constitution, or by statute. Zoning regulations that restrict short-term rentals in residential areas have been upheld where the restrictions are found to be substantially related to land use impacts in the area.<sup>47</sup> Prohibiting short-term occupancy in single-family areas has been held to be within the lawful scope of the zoning power.<sup>48</sup>

However, in 2011 the Florida State Legislature enacted legislation that specifically limits the authority of local governments to regulate or prohibit short-term rentals. Enacted as Chapter No.

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<sup>46</sup> See “More destinations shut the door on vacation rentals, *USA Today*, August 6, 2010 (commenting that the ban on short-term rentals in New York City apartments, most of which are already prohibited under many condominium and co-op bylaws, “will simply go further underground”).

<sup>47</sup> 5 RATHKOPF’S THE LAW OF ZONING AND PLANNING § 81:11 (4th Ed 2011) (hereinafter “RATHKOPF”) (citing to *Brown v. Sandy Bd. of Adjustment*, 957 P.2d 207 (Utah Ct. App. 1998) (finding that city has authority to prohibit short-term rentals in single-family neighborhood)).

<sup>48</sup> RATHKOPF § 81:11 (citing *Cope v. City of Cannon Beach*, 855 P.2d 1083, 317 Or. 339 (1993) and *Ewing v. City of Carmel-By-The-Sea*, 234 Cal. App. 3d 1579, 286 Cal. Rptr. 382 (6th Dist. 1991)).

2011-119 on June 2, 2011, the Florida law (entitled “An act relating to public lodging establishments and public food service establishments”) states:

A local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.<sup>49</sup>

As of the date of this paper, Florida appears to be the only state to have enacted legislation limiting the authority of local governments to regulate or prohibit short-term rentals. It is conceivable, however, that the Florida law may become a model for other states. This would appear to be the most likely in those states where short-term rentals comprise a meaningful segment of the tourist lodging industry.

## 4.2 TAKINGS

It is well established that a land use regulation that is excessively restrictive may constitute a “taking” of property for which compensation must be paid under the state constitution and the Fifth and Fourteenth Amendments to the United States Constitution.<sup>50</sup> The prevailing test for determining whether a regulatory taking has occurred was established in the landmark case of *Penn Central Transportation Co. v. City of New York*,<sup>51</sup> decided by the United States Supreme Court in 1978. The *Penn Central* test requires a balancing of the public and private interests involved in each case, weighing the following three factors: (1) the economic impact of the regulation on the property owner; (2) the extent to which the regulation interferes with the property owner’s “distinct investment-backed expectations;” and (3) the character of the governmental action (i.e., physical invasion v. economic interference).<sup>52</sup>

The application of the *Penn Central* “balancing test” is illustrated in an Oregon case that concerned a takings challenge to a short-term rental ordinance. In that case<sup>53</sup> rental property owners challenged a City of Cannon Beach, Oregon ordinance that prohibited the creation of new transient occupancy uses and required existing transient occupancy uses to end by 1997. The petitioners claimed that Ordinance 92-1 constituted a taking of property without just compensation under the Fifth and Fourteenth Amendments.<sup>54</sup> The Supreme Court of Oregon, however, upheld Ordinance 92-1, focusing ultimately on the economic impact of the restrictions:

We next consider whether Ordinance 92-1, by prohibiting transient occupancy, denies property owners economically viable use of their properties. We conclude that it does not. On its face, Ordinance 92-1 permits rentals of dwellings for periods of 14 days or more. The ordinance also permits the owners themselves to reside in the dwellings.

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<sup>49</sup> The enrolled version of House Bill No. 883 is available on the Florida State Legislature’s website at: <http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0883er.docx&DocumentType=Bill&BillNumber=0883&Session=2011>.

<sup>50</sup> PATRICIA E. SALKIN, 2 AMERICAN LAW OF ZONING § 16:1 (5th ed. 2008) (hereinafter “SALKIN”).

<sup>51</sup> *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646 (1978).

<sup>52</sup> SALKIN § 16:9 (citing *Penn Central*, 438 U.S. at 124).

<sup>53</sup> *Cope v. City of Cannon Beach*, 855 P.2d 1083 (Or. 1993).

<sup>54</sup> *See id.* at 1084.

Although those uses may not be as profitable as are shorter-term rentals of the properties, they are economically viable uses.<sup>55</sup>

As the court's analysis indicates, plaintiffs who challenge a short-term rental restriction as a taking of property face an uphill battle. As a practical matter, it is difficult to argue that a short-term rental prohibition denies the owner of *all* economically viable use of his land, particularly where longer-term rentals are still allowed.

### 4.3 DUE PROCESS

The Fourteenth Amendment to the U.S. Constitution prohibits any governmental action that deprives “any person of . . . liberty or property, without **due process** of law.” This clause imposes both substantive and procedural requirements. The substantive component of the due process clause, known as “substantive due process,” tests the governmental purposes implemented by land use regulations. To satisfy substantive due process, a regulation must advance a legitimate governmental purpose.<sup>56</sup> In general, a local land use ordinance will survive a substantive due process challenge if there exists a rational relationship between the terms of the ordinance and a legitimate governmental interest.<sup>57</sup> A local ordinance may be challenged on due process grounds either on its face, or as applied to a particular case. When a landowner makes a *facial* challenge to a zoning ordinance, “he or she argues that *any* application of the ordinance is unconstitutional.”<sup>58</sup> On the other hand, when a landowner makes an *as applied* challenge, he or she attacks “only the specific decision that applied the ordinance to his or her property, not the ordinance in general.”<sup>59</sup>

In a California case,<sup>60</sup> the plaintiffs challenged the city of Carmel's transient rental ordinance on substantive due process grounds, arguing that the prohibition was “not rationally related to the goals sought to be achieved.”<sup>61</sup> The California court of appeals rejected the substantive due process claim, finding that the ordinance was rationally related to the goals and policies set forth in the city's general plan, as well as the stated purpose of the R-1 district.<sup>62</sup> In support of its conclusion, the court explained that short-term rentals were inconsistent with the residential character of the community:

It stands to reason that the “residential character” of a neighborhood is threatened when a significant number of homes—at least 12 percent in this case, according to the record—are occupied not by permanent residents but by a stream of tenants staying a week-end, a week, or even 29 days. Whether or not transient rentals have the other “unmitigatable, adverse impacts” cited by the council, such rentals undoubtedly affect the essential character of a neighborhood and the stability of a community. Short-term tenants have little interest in public agencies or in the welfare of the citizenry. They do not participate in local government, coach little league, or join the hospital guild. They

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<sup>55</sup> *Id.* at 1086-87 (internal citations omitted).

<sup>56</sup> See SALKIN § 15:2.

<sup>57</sup> See *id.*

<sup>58</sup> *WMX Technologies, Inc. v. Gasconade County*, 105 F.3d 1195, 1198-99 n.1 (8th Cir. 1997) (emphasis added).

<sup>59</sup> See SALKIN § 15:2.

<sup>60</sup> *Ewing v. City of Carmel-by-the-Sea*, 234 Cal. App. 3d 1579 (6<sup>th</sup> Dist. Cal. 1991).

<sup>61</sup> *Id.* at 1596.

<sup>62</sup> See *id.* at 1589.



do not lead a scout troop, volunteer at the library, or keep an eye on an elderly neighbor. Literally, they are here today and gone tomorrow—without engaging in the sort of activities that weld and strengthen a community.<sup>63</sup>

Referring back to its discussion of Carmel’s stated goals, the court summarily concluded:

We have already determined that the ordinance is rationally related to the stated goal. Carmel wishes to enhance and maintain the residential character of the R-1 District. Limiting transient commercial use of residential property for remuneration in the R-1 District addresses that goal.<sup>64</sup>

The California state court decision illustrates the difficulty of challenging a short-term rental restriction on substantive due process grounds. In general, a short-term rental restriction seems likely to survive substantive due process scrutiny if the local jurisdiction articulates a legitimate governmental interest (e.g., the protection of residential character in predominantly single-family neighborhoods), and can produce some findings connecting short-term rental activity to the types of neighborhood and community impacts described in Carmel’s transient rental ordinance.

#### **4.4 EQUAL PROTECTION**

The Equal Protection Clause of the Fourteenth Amendment commands that no State shall “deny to any person within its jurisdiction the equal protection of the laws,” which states the basic principle that all persons similarly situated should be treated alike.<sup>65</sup> The general rule is that a state or local law is presumed to be valid and will be sustained if the classification drawn by the law is rationally related to a legitimate state interest.<sup>66</sup> If a local or state law does not involve a suspect classification (e.g., one that treats persons differently on the basis of race, alienage, or national origin) or a fundamental right (e.g., the right to vote, the right to interstate travel), then an equal protection challenge is analyzed under the rational basis test. The rational basis test is a very deferential test, under which an ordinance generally will be upheld if there is any “reasonably conceivable state of facts that could provide a rational basis for the classification.”<sup>67</sup> Moreover, the rational basis test does not require a legislative body to articulate its reasons for enacting an ordinance, because “[i]t is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature.”<sup>68</sup> This means that a court may find a rational basis for a law, even if it is one that was not articulated by the legislative body.

A short-term rental ordinance may be vulnerable to an equal protection challenge on the ground that it treats similar properties differently based on whether a property is occupied by short-term tenants or longer term tenants. For example, take an ordinance that generally does not impose a

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<sup>63</sup> *Id.* at 1591.

<sup>64</sup> *Id.* at 1596.

<sup>65</sup> See generally *Plyler v. Doe*, 457 U.S. 202, 216 (1982).

<sup>66</sup> See generally *Schweiker v. Wilson*, 450 U.S. 221, 230 (1981); *United States Railroad Retirement Board v. Fritz*, 449 U.S. 166, 174-175 (1980); *Vance v. Bradley*, 440 U.S. 93, 97 (1979); *New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

<sup>67</sup> *United States Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 101 S. Ct. 453, (1980).

<sup>68</sup> *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 113 S. Ct. 2096 (1993).

maximum occupancy limit on single family homes in a city's residential zoning districts, but does impose such a limit on homes that are used for short-term rentals. On its face, this ordinance treats similar properties (i.e., single family homes in the same zoning district) differently, based on whether they are used as a short-term rental. Because no suspect classification or a fundamental right is implicated, an equal protection claim against the ordinance would be reviewed under the deferential rational basis test. For the same rational basis reasons discussed above in connection with a substantive due process challenge, the short-term rental ordinance is likely to survive judicial scrutiny.

Since 2000, as a result of the U.S. Supreme Court decision in *Village of Willowbrook v. Olech*,<sup>69</sup> "selective enforcement" claims in land use cases may also be brought under the Equal Protection clause. Selective enforcement claims generally assert that a municipality arbitrarily applied its land use ordinance to a conditional use permit or other land use approval, or that enforcement of the ordinance was arbitrarily selective.<sup>70</sup> In *Olech*, the village refused to supply water to the plaintiffs unless they granted the village an easement that it had not required of other property owners. It was alleged that the village did so to retaliate for the plaintiffs having brought an earlier, unrelated suit against the village. The question before the Supreme Court was whether an individual who does not have a suspect classification or fundamental interest claim can nevertheless establish a "class of one" equal protection violation when vindictiveness motivated the disparate treatment. The Court held:

Our cases have recognized successful equal protection claims brought by a "class of one," where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. In so doing, we have explained that "the purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents."<sup>71</sup>

From a plaintiff's perspective, the difficult part of the *Olech* decision is its requirement that selective enforcement claims involve intentional treatment. Moreover, it is unclear whether the intentional treatment rule requires merely an intent to do an act or, more specifically, the intent to harm or punish an individual for the exercise of lawful rights.<sup>72</sup> Since *Olech*, most cases involving "class of one" equal protection claims that assert selective enforcement have not been successful.<sup>73</sup>

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<sup>69</sup> *Village of Willowbrook v. Olech*, 528 U.S. 562, 120 S. Ct. 1073 (2000).

<sup>70</sup> BRIAN W. BLAESSER & ALAN C. WEINSTEIN, FEDERAL LAND USE LAW & LITIGATION § 1:20 (Thomson-Reuters/West: 2011) (hereinafter "BLAESSER & WEINSTEIN").

<sup>71</sup> *Olech*, 528 U.S. at 564 (citations omitted).

<sup>72</sup> See BLAESSER & WEINSTEIN § 1:20.

<sup>73</sup> See generally BLAESSER & WEINSTEIN § 1:20, fn. 7.

## **SECTION 5: WAYS TO ADDRESS PROPOSALS TO ESTABLISH SHORT-TERM RENTAL RESTRICTIONS**

### **5.1 QUESTION THE NEED FOR SHORT-TERM RENTAL RESTRICTIONS**

One of the first questions that should be asked when a city or town proposes to adopt a short-term rental ordinance is whether there truly exists a need for the restrictions. In some cases, the perceived need for a short-term rental ordinance may be based solely on anecdotal evidence about the alleged problems caused by short-term rental tenants rather than on documented evidence that short-term rental tenants are causing problems. If nothing more than anecdotal evidence is provided in support of a proposed ordinance, it may allow opponents to later argue that it was adopted arbitrarily without any rational basis.

#### **5.1.1 Empirical Analysis**

Where proposed short-term rental restrictions appear to be supported solely by anecdotal evidence, Realtors<sup>®</sup> should question whether empirical studies using data from police call logs, code enforcement activity, and prosecutorial records have actually established the alleged adverse impacts to the community, and the degree to which those impacts are attributable to short-term rental properties. Below are some examples of the types of inquiries Realtors<sup>®</sup> can make of local government officials:

- What number of complaints logged by the local code enforcement and police departments were generated by short-term rentals? Does the data evidence an increase in the number of complaints attributable to short-term rentals over the last five years?
- How do the complaints concerning short-term rentals relate to the number of individuals occupying the short-term rental that is the subject of the complaint? Does the city or town have factual support to justify a proposed occupancy limit for short-term rental housing and to what extent does this limitation exceed the occupancy limits applicable to other types of housing?
- Does a specific type of complaint (e.g., noise disturbance, litter or trash, parking violations, or late night parties) constitute a large percentage of the total number of complaints recorded in the last five years? If so, does a provision of the local zoning or general ordinance already regulate the offending behavior? If it is possible to address the majority of the problems by enforcing existing nuisance regulations, rather than by imposing new maximum occupancy limits on short-term rentals, it may call into question the need for the proposed ordinance.
- Does a disproportionate number of complaints arise from a small number of rental properties? If yes, then a more appropriate response might be to adopt narrowly tailored regulations. An

example of this approach would be a regulation that would apply only after one or more violations are found on a property, rather than imposing the cost and disruption of new regulations on all owners of short-term rental property.

### **5.1.2 Stakeholder Input**

Realtors<sup>®</sup> should also urge that local government officials seek and consider input from individuals and organizations with a stake in the short-term rental industry as early in the process as possible. Stakeholder groups should include representatives of local homeowner associations, rental property management associations, the local Realtor<sup>®</sup> associations, the chamber of commerce, local tourism bureau, and other organizations involved in the short-term rental industry.

### **5.1.3 Public Process**

Realtors<sup>®</sup> should actively monitor and participate in the public hearing process. Early on, Realtors<sup>®</sup> should request an invitation to participate in any stakeholder groups formed by the local government prior to the public hearing process. Local governments often allow interested parties to discuss their concerns with local officials responsible for drafting and advising the local legislative body on a proposed ordinance at the beginning of the process. To the extent possible, Realtors<sup>®</sup> should take advantage of this opportunity to meet with the local planner or other staff members who may be drafting a proposed short-term rental ordinance.

State and local open public meetings laws generally require local legislative bodies to publish notice of scheduled public hearings, typically in the local newspaper, by posted notice at city or town hall, and/or on the official website of the city or town. If a draft of the proposed short-term rental ordinance is available prior to the public hearing, Realtors<sup>®</sup> should request a copy and review it thoroughly in advance of the hearing.<sup>74</sup> Realtors<sup>®</sup> should be prepared to submit written comments and/or to testify at the public hearing about their concerns with the proposal.

## **5.2 SUGGEST ALTERNATIVES TO SHORT-TERM RENTAL RESTRICTIONS**

### **5.2.1 Enforcement of Existing Ordinances**

Communities that wish to address the potential negative impacts of short-term rentals on residential neighborhoods likely already have regulations in place that are aimed at curtailing those types of impacts on a community-wide basis. In many cases the existing ordinances already address the types of behaviors and activity that would be the focus of short-term rental performance standards or operational restrictions. Below are some examples.

#### **5.2.1.1 Noise Limits**

Absent **preemption** by federal or state law, the control of noise is generally within the police power authority of local government. Communities commonly adopt noise control ordinances

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<sup>74</sup> The Realtor<sup>®</sup> association may obtain assistance in this effort through NAR's Land Use Initiative program.

for the purpose of controlling unnecessary, excessive, and annoying noise within the community. In the City of San Luis Obispo, California, for example, the Noise Control Ordinance Noise Control Ordinance (Chapter 9.12 of the San Luis Obispo Municipal Code) expressly declares any noise in violation of Chapter 9.12 to be a **public nuisance**, punishable by civil or criminal action. The term “noise disturbance” is defined to mean:

any sound which (a) endangers or injures the safety or health of human beings or animals, or (b) annoys or disturbs reasonable persons of normal sensitivities, or (c) endangers or injures personal or real property, or (d) violates the factors set forth in Section 9.12.060 of this chapter. Compliance with the quantitative standards as listed in this chapter shall constitute elimination of a noise disturbance.<sup>75</sup>

Additionally, specific types of noise violations that commonly arise in residential neighborhoods are regulated under Section 9.12.050, including the following:

- Noise disturbances that are “plainly audible at a distance of fifty feet from the noisemaker, unless the noise does not penetrate beyond the boundaries of the noisemaker’s own premise.”<sup>76</sup>
- Operating, playing or permitting the operation or playing of any radio, television set, phonograph, drum, musical instrument, or similar device between the hours of 10:00 PM and 7:00 AM in such a manner as to create a noise disturbance audible across a property line.<sup>77</sup>
- Operating, playing or permitting the operation or playing of any radio, television set, phonograph, drum, musical instrument, or similar device in a manner that creates a noise disturbance at any time in excess of noise levels defined in Section 9.12.060 (measured by decibel levels and duration of the disturbance).<sup>78</sup>

### 5.2.1.2 Public Nuisance

In general, cities and counties have the police power to declare and abate nuisances. The Boulder, Colorado nuisance abatement ordinance (Title 10, Chapter 2.5 of the Boulder Revised Code) defines a “public nuisance” to mean:

[A]ny condition or use of any parcel on or in which two or more separate violations of the Boulder Municipal Code have occurred within a twelve-month period, or three or more separate violations have occurred within a twenty-four month period, if, during each such violation, the conduct of the person committing the violation was such as to annoy residents in the vicinity of the parcel or passers-by on the public streets, sidewalks, and rights-of-way in the vicinity of the parcel.<sup>79</sup>

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<sup>75</sup> City of San Luis, California Municipal Code § 9.12.020(U).

<sup>76</sup> See San Luis Municipal Code § 9.12.050(A).

<sup>77</sup> See San Luis Municipal Code § 9.12.050(B)(1)(a).

<sup>78</sup> See San Luis Municipal Code § 9.12.050(B)(1)(b).

<sup>79</sup> “Nuisance Abatement Information Sheet,” City of Boulder, Colorado (available on-line at [http://www.bouldercolorado.gov/files/PDS/Code%20Enforcement/nuisanceabat\\_info.pdf](http://www.bouldercolorado.gov/files/PDS/Code%20Enforcement/nuisanceabat_info.pdf)).

No violations or actions are designated as “public nuisance” acts. Instead, the determination whether a violation triggers the nuisance abatement process is made by the responding law enforcement agency. For instance, in some cases, a trash violation may trigger the nuisance abatement process, while in others the problem might be best handled with a municipal court summons. Legal remedies to abate public nuisances generally include the filing of a criminal complaint, or a civil action, or an administrative abatement.

### **5.2.1.3 Property Maintenance Standards**

A property maintenance ordinance might be adopted for the purpose of maintaining, preserving, or improving a community’s inventory of residential and non-residential buildings. To accomplish this, property maintenance ordinances typically establish standards for the exterior maintenance of affected structures, including basic structural elements such as foundations and supporting columns, exterior finish surfaces, and doors and windows. Property maintenance standards may also require property owners to maintain existing trees, shrubs and other significant vegetation, and to keep all exterior areas sanitary free of trash and refuse.

### **5.2.1.4 Unruly Public Gathering Ordinance**

Some communities, particularly college towns, such as Berkeley, CA and Tucson, AZ, have adopted “unruly gathering” ordinances that create significant sanctions for residents and property owners who host gatherings that create a substantial disturbance, as well as for party attendees who contribute to the problem. A significant advantage that an unruly gathering ordinance would have over a general noise ordinance or short-term rental ordinance is that the individual responsible for the disturbance is also penalized, rather than the tenant and/or property owner alone. Since the penalties for violating a noise ordinance generally apply only to the residents of the property where the violation occurs, a noise ordinance is unlikely to deter party guests from violating its terms.

### **5.2.1.5 Nighttime Curfew**

To the extent that under-aged drinking and juvenile crime are a significant contributors to excessive noise and party disturbances in short-term rental properties in residential neighborhoods, a nighttime curfew ordinance that prohibits persons under the age of 18 years from being on or about public streets and public places during specified hours of the day could be an effective deterrent. The effectiveness of nighttime curfews is evidenced by a 2002 survey published by National League of Cities, in which 97% of communities that have nighttime curfew ordinances reported that they help combat juvenile crime. It bears noting, however, that a juvenile curfew ordinance generally would not be applicable to college students and other youthful offenders over the age of eighteen. To the extent that parties hosted and attended by college-aged young people are perceived as causing the disturbances that are of greatest concern, a curfew ordinance would probably have little, if any, effect.

### **5.2.1.6 Parking Restrictions**

Communities often address the problem of improperly parked vehicles and excessive numbers of vehicles parked in residential neighborhoods through off-street parking regulations. These regulations may include provisions that prohibit vehicle parking within front yard setback areas in residential zoning districts and that restrict vehicle parking to hard surface driveways or designated parking areas. Regulations may also prohibit parking on grass areas, sidewalks, or within a certain distance of side property lines.

### **5.2.2 Adoption of Ordinances that Target Community-Wide Issues**

Communities that have not adopted general community-wide noise regulations or the other regulations aimed at curtailing the types of behaviors and activities that would be regulated under a short-term rental ordinance, should be encouraged to adopt such general regulations rather than to single out short-term rental properties for regulation.

## **5.3 SHORT-TERM RENTAL HOUSING REGULATION BEST PRACTICES**

This section presents several types of “best practice” provisions that have been implemented in jurisdictions which have short-term rental restrictions and which Realtors<sup>®</sup> may find acceptable, depending upon local market conditions. Each section begins with a brief description of the type of best practices. This description is followed by one or more examples of the best practice technique as adopted by local jurisdictions.

### **5.3.1 Narrowly-Tailored Regulations**

An effective short-term rental ordinance should be narrowly tailored to address the specific needs of the local community. The potential for over-regulation is a legitimate concern, particularly when a proposed ordinance is driven by the vocal complaints of one or more permanent residents about their negative experiences with nearby short-term renters. Residents often complain that short-term rentals are inherently incompatible with residential neighborhoods and demand an outright prohibition against the use. In those circumstances, the concern is that elected officials, in an effort to please their constituency, may acquiesce to those demands without carefully considering: (a) whether there truly exists a need for short-term rental restrictions; and (b) if a need exists, what regulatory approach is best-suited to addressing the particular needs of the community.

Short-term rental restrictions can be tailored to fit the specific needs of the community in several important ways. As a threshold matter, communities should consider the degree to which short-term rentals need to be regulated. If a community’s overriding concern is that a significant number of residential properties that are being used as short-term rentals are failing to report and pay local and state transient occupancy taxes, then an ordinance requiring short-term rental owners to register their properties with the local government and penalizing noncompliance may be sufficient to address that concern. To the extent that short-term rentals are a problem only in certain residential neighborhoods, a rationally justified ordinance that applies only in those areas

would be a more appropriate response than one that regulates the use more broadly, even in areas where short-term rentals not only are accepted, but also are highly desired.

**Best Practice Example: Clatsop County, Oregon.** In Clatsop County, the Comprehensive Plan/Zoning Map divides the county into nearly forty zoning district designations, including more than a dozen residential districts.<sup>80</sup> The county’s short term vacation rental ordinance, however, applies only to properties within the Arch Cape Rural Community residential district.<sup>81</sup>

### 5.3.2 “Grandfathering” Provisions

Short-term rentals that lawfully existed prior to the enactment of a short-term rental ordinance, but are not allowed under the newly adopted ordinance—either because the use is prohibited outright or because the applicant is unable to satisfy the criteria for obtaining a permit—should be allowed to continue (i.e., “grandfathered”) if the property owner is able to demonstrate that the short-term rental use pre-dated the ordinance. Zoning ordinances typically contain a general nonconformity provision that establishes the requirements for a use or structure to secure a legal nonconforming status. However, short-term rental ordinances may also contain specific grandfathering clauses that allow short-term rentals in existence on the effective date of the ordinance to continue even if the property cannot satisfy the applicable requirements.

**Best Practice Example: Kauai County, Hawaii.** Under Section 8-3.3 of the Kauai County Code, transient vacation rentals are generally prohibited in the R-1, R-2, R-4, and R-6 residential zoning districts, except within the designated Visitor Destination Areas established under the Code. However, under Sections 8-17.9 and -17.10, single-family transient vacation rentals in non-Vacation Destination Areas that were in lawful use *prior* to the effective date of the ordinance are allowed to continue, subject to obtaining a nonconforming use certificate. To obtain a nonconforming use certificate, an owner must provide a sworn affidavit and demonstrate to the satisfaction of the Planning Director that:

[the] dwelling unit was being used as a vacation rental on an ongoing basis prior to the effective date of this ordinance and was in compliance with all State and County land use and planning laws . . . up to and including the time of application for a nonconforming use certificate.<sup>82</sup>

The owner of operator of a transient vacation rental unit bears the burden of proof in establishing that the use is properly nonconforming based on submission of the following documentary evidence: records of occupancy and tax documents, including: State of Hawaii general excise tax and transient accommodations tax filings, federal and/or state income tax returns for the relevant time period, reservation lists, and receipts showing payment of deposits for reservations and fees for occupancy of the subject property by transient guests.<sup>83</sup>

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<sup>80</sup> See Clatsop County, OR Land and Water Development and Use Ordinance, Table 3.010.

<sup>81</sup> See Clatsop County, OR Ordinance No. 03-13.

<sup>82</sup> Kauai County Code § 8-17.10(c).

<sup>83</sup> Kauai County Code § 8-17.10(e).



**Best Practice Example: Monterey County, California.** Monterey County’s short-term rental ordinance grandfathers short-term rental units that were in operation before the ordinance was adopted. Section 21.64.280 of the Zoning Ordinance provides:

Transient use of residential property in existence on the effective date of this Section shall, upon application, be issued an administrative permit provided that any such units devoted to transient use are registered with the Director of Planning and Building Inspection and the administrative permit application is filed within 90 days of the effective date of this Section. . . . The owner/registrant shall have the burden of demonstrating that the transient use was established. Payment of transient occupancy taxes shall be, but is no the exclusive method of demonstrating, evidence of the existence of historic transient use of residential property.<sup>84</sup>

### 5.3.3 Quantitative and Operational Restrictions

*Quantitative Restrictions.* The use of quantitative restrictions (i.e., fixed caps, proximity restrictions, and maximum short-term to long-term occupancy ratios) as a means of mitigating the impacts of short-term rentals can be viewed in two ways. On the one hand, such limitations on the number of short-term rentals allowed in a community are preferable to an outright prohibition on the use. On the other hand, for property owners desiring to enter the short-term rental market after the effective date of a short-term rental ordinance, a quantitative restriction may act as a barrier to entry. Quantitative restrictions therefore may constitute a reasonable compromise position in circumstances where community support is divided on a proposed short-term rental ban.

Jurisdictions considering a quantitative restriction should carefully consider which technique is best suited to further the needs and goals of the community. For example, if a community finds that the negative impacts of short-term rentals are manifested only when they exist in clusters or in close proximity to one another in a residential neighborhood, then a *proximity restriction* would be a more effective technique than a fixed cap or ratio. On the other hand for a community seeking to maintain a balance between its long-term housing needs and visitor-oriented accommodations, a maximum *ratio* of long term residential dwelling units to short-term rental permits would be more effective than a fixed cap or proximity restriction.

**Best Practice Example: Mendocino County, California.** Section 20.748.005 of the Mendocino County Code states that the county’s “single unit rentals and vacation rentals” ordinance is intended, in part, “to restore and maintain a balance between the long-term housing needs of the community and visitor oriented uses.” To maintain that balance, the ordinance requires the county to “maintain, at all times, for new vacation home rentals or single unit rentals approved after the effective date of this ordinance, a ratio of thirteen (13) long term residential dwelling units to one (1) single unit rental or vacation home rental.”<sup>85</sup> While the ordinance does not require any reduction in the number of single unit rentals and vacation rentals in existence on the effective date of the ordinance, no new applications may be approved unless and until

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<sup>84</sup> Monterey County, CA Zoning Ordinance § 21.64.280(d)(1)(b).

<sup>85</sup> Mendocino County, CA Code § 20.748.020(A).

thirteen new residential dwelling units have been completed since the single unit rental or vacation home rental permit was approved.<sup>86</sup>

**Best Practice Example: San Luis Obispo County, California.** The vacation rental ordinance adopted by San Luis Obispo County was adopted for the general purpose of ensuring that short-term rental uses “will be compatible with surrounding residential uses and will not act to harm and alter the neighborhoods they are located within.”<sup>87</sup> More specifically, the county found that “residential vacation rentals have the potential to be incompatible with surrounding residential uses, especially when several are concentrated in the same area, thereby having the potential for a deleterious effect on the adjacent full time residents.”<sup>88</sup> Accordingly, rather than prohibiting vacation rentals in county neighborhoods, San Luis Obispo County adopted the following proximity restriction on the use:

[N]o residential vacation rental shall be located within 200 linear feet of a parcel on the same block on which is located any residential vacation rental or other type of visitor-servicing accommodation that is outside of the Commercial land use category.<sup>89</sup>

*Operational Restrictions.* Although short-term rental restrictions commonly include some operational restrictions, the restrictions often unnecessarily duplicate generally applicable regulations already adopted by the local jurisdiction. Several of these types of regulations are discussed in Section 5.2 above. In general, the types of negative impacts most commonly cited by communities with short-term rental restrictions—late-night music and partying, garbage left out on the street on non-pickup days, illegal parking, and negligent property maintenance—are community-wide concerns that are best regulated with a generally applicable ordinance rather than one that singles out short-term rentals for disparate treatment. It stands to reason that the impacts that these types of activities have on residential neighborhoods are the same regardless of whether they are produced by long-term residents or short-term renters. Therefore, the best practice technique for addressing those concerns is to adopt a general ordinance that governs the activity or behavior in all areas of the community.

### 5.3.4 Licensing/Registration Requirements

Virtually all short-term rental ordinances require owners who intend to offer their property for use as a short-term rental to obtain a license or permit prior to commencing the use. In general, licensing and registration requirements enable local governments to create and maintain a database of dwelling units being operated as short-term rentals for code enforcement and transient occupancy tax collection in jurisdictions authorized to collect such taxes. The procedures and criteria for obtaining a short-term rental license or permit should be clearly set out in the local ordinance. Short-term rental licensing and registration applications should be processed administratively and without need for a public hearing. Such licensing/registration requirements should not require a conditional use permit or a similar-type zoning permit.

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<sup>86</sup> See Mendocino County, CA Code § 20.748.020(A)-(B)..

<sup>87</sup> San Luis Obispo County, CA Code § 23.08.165(a).

<sup>88</sup> *Id.*

<sup>89</sup> San Luis Obispo County, CA Code § 23.08.165(c).

**Best Practice Example: City of Palm Springs, California.** In the City of Palm Springs, residential property owners are required to register the property as a vacation rental prior to commencing the use. Section 5.25.060 of the Palm Springs Municipal Code requires owners to submit a registration form that is furnished by the city and that requires certain information to be provided, including, for example: (a) the name, address, and telephone number of the owner and his agent, if any; (2) the address of the vacation rental unit; (3) the number of bedrooms in the rental unit; and (4) evidence of a valid business license issued for the business of operating vacation rentals, or submission of a certificate that owner is exempt or otherwise not covered by the city’s Business Tax Ordinance for such activity. Vacation rental registration also requires the owner to pay a fee in an amount to be established by the city council, subject to the limitation that the registration fee “shall be no greater than necessary to defer the cost incurred by the city in administering the [vacation rental registration].”<sup>90</sup>

**Best Practice Example: City of Encinitas, California.** In the City of Encinitas, short-term rental permits likewise require submittal of an application form and payment of a fee no greater than necessary to defer the cost incurred by the city in administering the short-term rental permit program. Short-term rental permits will be granted “unless the applicant does not meet the conditions and requirements of the permit, or fails to demonstrate the ability to comply with the Encinitas Municipal Code or other applicable law.”<sup>91</sup>

### 5.3.5 Inspection Requirements

As noted in Section 3.1.3, many communities require short-term rental properties to pass certain inspections prior to the issuance or renewal of a short-term rental permit. However, mandatory inspection requirements arguably do not advance a community’s interests in protecting and maintaining residential character or preventing the adverse effects of transient occupancy on residential neighborhoods. Therefore, if a short-term rental ordinance is specifically adopted for reasons related to protection of residential character, then a mandatory inspection requirement is unnecessary and should not be imposed upon rental property owners.

**Best Practice Examples: Douglas County, Nevada; City of Palm Springs, California; and Sonoma County, California.** The short-term rental ordinances adopted by these communities were generally adopted for reasons related to the impacts of short-term rental uses on residential neighborhoods. However, none of these ordinances include a mandatory inspection requirement, either at the time of initial permit issuance or thereafter.

Mandatory inspection requirements may be justified in cases where a short-term rental ordinance is adopted for the purpose (at least in part) of ensuring the safety of short-term rental tenants. For example, one of the stated purposes of the transient private home rental ordinance adopted by the City of Big Bear Lake, California is “to ensure . . . that minimum health and safety standards are maintained in such units to protect the visitor from unsafe or unsanitary conditions.”<sup>92</sup> It stands to reason that a provision requiring inspection of transient private rental

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<sup>90</sup> City of Palm Springs, CA Municipal Code § 5.25.060(b).

<sup>91</sup> See City of Encinitas, CA Municipal Code § 9.38.040(A)(3).

<sup>92</sup> City of Bear Lake, CA Municipal Code § 17.03.310(A).

homes in Big Bear Lake to determine compliance with such minimum health and safety standards would further that purpose.

However, even if a mandatory inspection requirement can be justified, the scope of the inspection program should be limited to the initial permit issuance and thereafter only on a reasonable periodic basis. Provisions requiring short-term rental units to be inspected annually (typically as a condition precedent to the issuance of a permit renewal), such as Section 17.03.310(D)(2) of the Big Bear Lake ordinance, are unnecessarily burdensome on owners and the local government alike.

**Best Practice Example: City of Cannon Beach, Oregon.** The short-term rental ordinance adopted by the City of Cannon Beach provides an example of a more reasonable periodic inspection requirement. Under Section 17.77.040(A)(2) of the Cannon Beach Zoning Code, at the time of application for a new transient rental permit (or new vacation home rental permit) the dwelling is subject to inspection by a local building official to determine conformance with the requirements of the Uniform Housing Code. Thereafter, twenty percent of the dwellings that have a transient rental or vacation home rental permit are inspected each year, so that over a five-year period, all such dwellings have been re-inspected.<sup>93</sup>

### 5.3.6 Enforcement Provisions

When short-term rental restrictions are adopted pursuant to a local government's zoning authority and incorporated into the jurisdiction's zoning code, it is reasonable to expect the ordinance to be enforced in accordance with the generally applicable enforcement provisions of the zoning code, if one exists. Similarly, it is reasonable to expect that short-term rental registration and licensing provisions that are incorporated into a community's general (non-zoning) code to be enforced pursuant to the generally applicable code enforcement provision. The short term rental regulations adopted in Tillamook County and Clatsop County, Oregon and Monterey County, California, for example, are enforced in accordance with generally applicable enforcement and penalty provisions.

It is not uncommon, however, for communities to enact special enforcement and penalty provisions in their short-term rental ordinances. Many short-term rental ordinances contain enforcement and penalty provisions that penalize violations more severely than other types of code violations. In Palm Springs, California, for example, a first violation of the Vacation Rental Ordinance is subject to a \$250 fine and subsequent violations are subject to a fine of \$500.<sup>94</sup> By contrast, under Section 1.06.030 of the Palm Springs Municipal Code, the general penalties for code violations are \$100 for the first administrative citation and \$250 for the second. The Vacation Rental Ordinance does not explain why violations of that ordinance are penalized more severely than other types of code violations.

Enforcement provisions should not penalize short-term rental property owners (or their agents) for violations beyond their control. For example, if a short-term rental *tenant* violates a noise level restriction, the property owner should not be held responsible for the violation.

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<sup>93</sup> See City of Cannon Beach, OR Zoning Code § 17.77.040(2)(a).

<sup>94</sup> See City of Palm Springs, CA Municipal Code § 5.25.090(a).

**Best Practice Example: Douglas County, Nevada.** Chapter 5.40 of the Douglas County Code regulates vacation home rentals in the Tahoe Township. Although the vacation home rental ordinance imposes certain operational restrictions on permitted rental units (e.g., parking and occupancy limitations and trash/refuse container rules), Section 5.40.110 states that a permit may be suspended or revoked only for a violation committed by the owner.

**5.41.110 Violation and administrative penalties.**

- A. The following conduct is a violation for which the permit [sic] suspended or revoked:
  - 1. The owner has failed to comply with the standard conditions specified in section 5.40.090(A) of this code; or
  - 2. The owner has failed to comply with additional conditions imposed pursuant to the provisions of section 5.40.090(B) and (C) of this code; or
  - 3. The owner has violated the provisions of this chapter; or
  - 4. The owner has failed to collect or remit to the county the transient occupancy and lodging taxes as required by Title 3 of this code.
  - 5. Any false or misleading information supplied in the application process.

Prior to the imposition of fines or other penalties, a short-term rental ordinance should conform to the due process requirements established under state law and/or the local jurisdictions charter or code of ordinances. At a minimum, before fines or other penalties are imposed, property owners should be given notice of, and an opportunity to cure, any alleged violation, except where exigent public safety concerns exist. As demonstrated in the best practice examples below, property owners should be given the opportunity to request a public hearing and have the right to appeal a local government's decision to suspend or revoke a short-term rental permit.

**Best Practice Example: City of Encinitas, California.** Under Section 9.38.060 of the City of Encinitas short-term rental ordinance, penalties may be imposed and permits may be suspended only in accordance with the following provisions:

- A. The City Manager shall cause an investigation to be conducted whenever there is reason to believe that a property owner has failed to comply with the provisions of this Chapter. Should the investigation reveal substantial evidence to support a finding that a violation occurred, the investigator shall issue written notice of the violation and intention to impose a penalty, or penalty and suspend the permit. The written notice shall be served on the property owner and operator or agent and shall specify the facts which in the opinion of the investigator, constitute substantial evidence to establish grounds for imposition of the penalties, or penalties and suspension, and specify that the penalties will be imposed and/or that the permit will be suspended and penalties imposed within 15 days from the date the notice is given unless the owner and/or operator files with the city clerk the fine amount and a request for a hearing before the City Manager.
- B. If the owner requests a hearing within the time specified in subsection (A), the City Clerk shall serve written notice on the owner and operator, by mail, of the date, time and place for the hearing which shall be scheduled not less than 15 days, nor more

than 45 days of receipt of request for a hearing. The City Manager or his or her designee shall preside over the hearing. The City Manager or his or her designee shall impose the penalties, or penalties and suspend the permit only upon a finding that a violation has been proven by a preponderance of the evidence, and that the penalty, or penalty and suspension are consistent with this Chapter. The hearing shall be conducted according to the rules normally applicable to administrative hearings. A decision shall be rendered within 30 days of the hearing and the decision shall be appealable to the City Council if filed with the City Clerk no later than 15 days thereafter, pursuant to Chapter 1.12.<sup>95</sup>

**Best Practice Example: City of Cannon Beach, Oregon.** Section 17.77.050(B) of the Cannon Beach Zoning Code provides another example of the notice and public hearing process afforded to short-term rental property owners prior to the imposition of fines or the revocation of a permit.

5. The city shall provide the permit holder with a written notice of any violation of subsection (A)(4) of this section that has occurred. If applicable, a copy of the warning notice shall be sent to the local representative.
6. Pursuant to subsections (B)(4)(b) through (d) of this section, the city shall provide the permit holder with a written notice of the permit suspension and the reason for that suspension. The permit holder may appeal the suspension to the city council by filing a letter of appeal with the city manager within twenty days after the date of the mailing of the city manager's order to suspend the permit. The city manager's suspension shall be stayed until the appeal has been determined by the city council. The city council shall conduct a hearing on the appeal within sixty days of the date of the filing of the letter of appeal. At the appeal, the permit holder may present such evidence as may be relevant. At the conclusion of the hearing, based on the evidence it has received, the council may uphold, modify, or overturn the decision of the city manager to suspend the permit based on the evidence it received.
7. Pursuant to subsection (B)(4)(e) of this section, the city shall provide the permit holder with a written notice that it intends to revoke the permit and the reasons for the revocation. The city council shall hold a hearing on the proposed revocation of the permit. At the hearing, the permit holder may present such evidence as may be relevant. At the conclusion of the hearing, based on the evidence it has received, the council may determine not to revoke the permit, attach conditions to the permit, or revoke the permit.
8. A person who has had a transient rental occupancy permit or a vacation home rental permit revoked shall not be permitted to apply for either type of permit at a later date.<sup>96</sup>

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<sup>95</sup> City of Encinitas, CA Municipal Code § 9.38.060.

<sup>96</sup> City of Cannon Beach, OR Zoning Code § 17.77.050(B)

## GLOSSARY OF TERMS

**Common law:** Law developed by judges through decisions of courts and similar tribunals rather than through legislation (statutes) or executive actions.

**Due Process:** The constitutional protections given to persons to ensure that laws are not unreasonable, arbitrary, or capricious. When such laws affect individuals' lives, liberty, and property, due process requires that they have sufficient notice and opportunity to be heard in an orderly proceeding suited to the nature of the matter at issue, whether a court of law or a zoning board of appeals. Essentially, due process means fairness.

**Equal Protection:** The right of all persons under like circumstance to enjoy equal protection and security in their life, their liberty, and their property and to bear no greater burdens than are imposed on others under like circumstances.

**Nonconforming Use:** A use that lawfully existed prior to the enactment of a zoning ordinance, and that is maintained after the effective date of the ordinance, although it does not comply with the zoning restrictions applicable to the district in which it is situated, is commonly referred to as a "nonconforming use."<sup>97</sup>

**Police Power:** The power that resides in each state to establish laws to preserve public order and tranquility and to promote the public health, safety, morals, and other aspects of the general welfare.

**Preemption:** A doctrine based on the Supremacy Clause of the U.S. Constitution that holds that certain matters are of such national, as opposed to local, character that federal laws preempt or take precedence over state laws on such matters. As such, a state may not pass a law inconsistent with the federal law. The doctrine of *state law* preemption holds that a state law displaces a local law or regulation that is in the same field and is in conflict or inconsistent with the state law.<sup>98</sup>

**Public Nuisance:** At common law "public nuisance" generally consists of "an unreasonable interference with a right common to the general public, including activities injurious to the health, safety, morals or comfort of the public."<sup>99</sup>

**Zoning Enabling Statute:** State legislation "authorizing local governments to engage in planning and the regulation of activity on private land."<sup>100</sup>

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<sup>97</sup> PATRICIA E. SALKIN, AMERICAN LAW OF ZONING § 12:1 (5th ed. 2010).

<sup>98</sup> Article VI, Section 2, of the U.S. Constitution, commonly referred to as the "Supremacy Clause," provides that the "Constitution, and the Laws of the United States ... shall be the supreme Law of the Land."

<sup>99</sup> ZONING AND LAND USE CONTROLS § 16.02[2].

<sup>100</sup> See ZONING AND LAND USE CONTROLS, Ch. 1, Introduction and User's Guide § 1.02[2] (LexisNexis Matthew Bender) (hereinafter "ZONING AND LAND USE CONTROLS").



## CITY OF BELLE ISLE, FLORIDA CITY COUNCIL AGENDA ITEM COVER SHEET

**Meeting Date:** April 17, 2018

**To:** Honorable Mayor and City Council Members

**From:** B. Francis, City Manager

**Subject:** Request of Adam McGinnis for Cross Lake Beach Park

**Background:** On April 2, 2018, the City received a petition for City Waiver of Riparian Rights t from Adam McGinnis for Cross Lake Beach. In the past, the City considered Cross Lake Beach a park at the end of a public right-of-way from the intersection of Oak Island Road to Lake Conway. This assumption is supported by the City's 1990 Comprehensive Plan that describes Cross Lake Beach. Mr. McGinnis's property is adjacent to Cross lake Beach and he has to access his property through a small part of the park. Approximately 8 months ago, Mr. McGinnis approached the City to see what could be done to resolve this problem. Two of the resolutions were his offer to purchase Cross Lake Beach or have the City vacate Cross Lake Road to the adjacent Property owners. At that time, the Council directed the City Attorney to work on a resolution for all lakefront issues with City rights-of-way. The City Attorney drafted a memorandum on the issue, giving options on those locations; one of which was Cross Lake. The memorandum was not reviewed by Council.

Since this time, Mr. McGinnis did research on his own and discovered that Cross Lake Beach is actually owned by the state and in speaking with Division of State Lands, this is accurate. The State would sell the property to Mr. McGinnis if the City gave up its upland rights to the property. Mr. McGinnis is requesting the City do so and then he can purchase the property from the State. However, the City can also purchase the property from the State since the City has upland rights to the land. In a meeting with Mr. McGinnis, John Walker, the Attorney for Mr. McGinnis, Attorney Dan Langley, and me, I stated that if the City has the option to purchase the property, then we would. I submitted an application to the State and the State responded that the application was in order and further directed that I had to have Orange County, acting as the Lake Conway Navigation District Board, provide a recommendation on the City's application to purchase the property. I sent the application to Orange County last week for Orange County to start the process.

I received a phone call from the State saying that they are lining up an appraiser to provide an appraisal and cost for the property. A similar parcel adjacent to this parcel sold in 2015 for \$37,000.

At the April 3, 2018 Council Meeting, this issue was briefly discussed and the City Council directed the City Manager to contact Mr. McGinnis and have him come to a Council Meeting to explain the reason(s) why he wants to purchase this property.

Concurrently, the City Attorney reviewed the petition submitted by Mr. McGinnis and found it to be deficient for several reasons. I communicated this and the Council's request to Mr. McGinnis in an email to him.



**Staff Recommendation:** Review and discuss Mr. McGinnis's request to purchase the property but not give up the City's upland rights to purchase the property and also to continue to move forward with the purchase from the State

**Suggested Motion:** None needed

**Alternatives:** None

**Fiscal Impact:** Depends on State's appraisal

**Attachments:**

- Excerpt from 1990 Comp Plan
- Draft memorandum from Attorney Callan
- Petition from Adam McGinnis
- City Application to State
- City Letter to BCC of Orange County
- Orange County Code on the process
- Copy of County Approval for adjacent property owner's purchase in 2015
- Email from City Manager to Adam McGinnis

To: City of Belle Isle

From: Tom Callan, Draft memo

RE: Lake Safety, Lake Environmental Quality and Lake Access

This memo examines the current use of Lake Conway, examines possibilities and methods to improve and install water quality treatment at improved roadways and boat ramps, examines the complaints by residents as to over use and under enforcement and considers what steps if any exist or that are needed to balance the rights of the general public through public and associational access points with single family residential riparian lakefront users.

1. There are a city rights of way that end at the shoreline of Lake Conway. They possess many uses and attributes:
  - a. Unimproved dirt roadway used to access water (launch, paddle, ped) (Cross Lake);
  - b. unopened (Wallace);
  - c. paved with access to the shoreline (Venetian and Perkins) and used as a public ramp;
  - d. public used with county (Warren Park);
  - e. Pedestrian and Paddle parks (Trimble, Swann, and Delia).
2. In addition to the City rights of way, there are two county ramps (Hoffner and Ferncreek) to serve the General Public.
3. In addition to the public ramps there are several privately owned HOA ramps and dockage areas within the City:
  - a. Wind Harbor;
  - b. Lake Conway Shores HOA;
  - c. Lake Conway East HOA;
  - d. Conway Groves HOA;
  - e. Landings at Lake Conway;
  - f. Oak Island; and,
  - g. Lake Conway Estates HOA.
4. There are several private HOA ramps on Lake Conway outside of the limits of Belle Isle such as:
  - a. Lake Conway Woods (County);
  - b. Conway Place HOA (County);
  - c. Lakeside Village Conway (County);
  - d. Lake Harbor Cir (Edgewood);
  - e. FOP (Edgewood); and
  - f. Camelot apartments (Edgewood).

5. It would seem that with the above, Lake Conway through its three connected water bodies is more than sufficiently served by ramps.

DRAFT

An issue and discussion is how to move forward with the increase of water traffic from non- lakefront users that seems to have created hazards or limits the use of the lake by the riparian owners not listed in 1-4, above, namely the lakefront single family users.

**Supply limitations.** The demand to use the lake seems to have increased and expanded, with the advent of smaller personal craft users. While the use and demand has expanded, the area of use is a constant. So, the growing use of Lake Conway is not without limitation.

**Ownership between State and lakefront owners.** Lake Conway has been treated a navigable body of water in 1845 as to be a water of the state. The divide in ownership between the lakefront land owner and the State is determined under Florida Law as the “ordinary high water mark<sup>1</sup>” on a lot, which is a factual question. This is determined ultimately by a judge if the parties cannot agree.; as such most title insurance policy on lake front property will contain an exception for any claim of ownership by the state including any filled, submerged or accreted property, unless removed by sufficient evidence to the title insurer to remove same.

The ordinary high water mark can change over the years.<sup>2</sup> Land has accreted from Lake Conway to adjacent lots as seen by a comparison of the OCPA tax maps with the original plats surrounding Lake Conway in the 1920s or so. Again, accretion like the ordinary high water mark is a factual determination.

**Riparian Rights.** A Lakefront owner can have what are described as riparian rights to the navigable water. Actually, riparian rights as a term apply to river or stream, and littoral rights apply to waterfront owns on a lake. Cases and statutes use riparian owner broadly to describe all waterfront owners. *Bd. Of Trs. V. Sand Key Associates.*

Riparian rights have been defined by the Florida Supreme Court in the above case to include: the right of view, access to the water, use of the water for navigational purposes, and to receive accretions or relictions to the upland property. These rights may be regulated by law, but cannot be taken without compensation and due process. Riparian rights may also be sold and bifurcated from the upland property, unless prevented by any valid law or regulation.

The existence of whether an abutting lot has any riparian rights is a factual question. If the deed to the property does not go and include the shoreline, then one could argue there are no riparian rights under the *Axline v. Shaw* case.

**Lakefront Lot owners.** The properties fronting Lake Conway are treated as premium residences and pay higher taxes due to the higher land values associated with lakefront property. The complaints have been that with the increase use of the lake and including the increase in

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<sup>1</sup> “Ordinary High Water Mark” was defined in *Tilden v. Smith*: “A high water mark, as a line between the riparian owner and public, is to be determined by examining the bed and banks, and ascertaining where the presence and action of the water are so common and usual, and so long continued in all ordinary years, as to mark upon the soil of the bed a character distinct from that of the banks, in respect to vegetation as well as respects the nature of the soil itself.”

<sup>2</sup> “Accretion” means “the gradual and imperceptible accumulation of land along the shore or bank of a waterbody.” “Reliction or dereliction” is an increase of the land by a gradual and imperceptible withdrawal of any body of water.

personal use watercraft, these lakefront owners right of use and access is being limited. Stated another way, any over use of a private or public boat ramp may diminish the rights of adjoining riparian owners. The use by the public need not be of the amount or quality which limits or restricts the use and enjoyment of the shoreline owners. This is particular of concern with the State's revision and limitation as to enforcement of boater safety and speed regulations. The State of Florida has had its powers of enforcement limited and restricted by the Legislature. This has impacted the scope and effectiveness of enforcement

**City of Belle Isle Lakefront property.** As the demand continues to grow, there may come a time that the State or County wishes to take over the Venetian, Swann, Perkins, Cross Lake and Wallace rights of way to operate ramps that pre-empt Belle Isle regulation and enforcement. Against this back drop, non-residents of the City have used the Venetian and Perkins boat ramps and create parking conflicts and block roads.

**Proposals on the City Lakefront Property.** The following proposals are offered to address the issues described above and position the City from over use of the Lake from the city owned property:

1. Perimeters for the vacation and reservation on Wallace Road to evaluate:
  - a. Vacate the right of way 300 feet from shoreline, reserve access for police enforcement, for city resident pedestrian access, and for any lawful use or right of use that runs to any lot which is subject of the plat;
  - b. Reservation can be the middle 20 feet of the 50ft or 60ft wide foot roadway;
  - c. The vacated portion will revert to the two abutting landowners subject of the reservation and subject to the rights under the plat, as implied by law;
  - d. The receiving owners agree to the uses of the Wallace Park property for the school or other municipal use, and,
  - e. The receiving owner pay to the City an amount of \$\_\_\_\_\_.
  
2. Perimeters for the vacation and reservation on Venetian to evaluate:
  - a. Option One (Vacation):
    - i. Vacate the right of way 100 feet from shoreline, reserve access for police enforcement, for city resident pedestrian access, drainage and for any lawful use or right of use that runs to any lot which is subject of the plat;
    - ii. Reservation can be the middle 20 feet of the 50ft or 60ft wide foot roadway;
    - iii. The vacated portion will revert to the two abutting landowners subject of the reservation and subject to the rights under the plat, as implied by law;
    - iv. The receiving owners agree to the uses of the Wallace Park property for the school or other municipal use, and,
    - v. The receiving owner pay to the City an amount of \$\_\_\_\_\_.
  - b. Option Two (Designation as a Park versus Roadway):
    - i. Ordinance to designate the right of way 100 feet from shoreline as a park;
    - ii. Construct pollution abatement and water quality improvements across the roadway for water quality treatment;
    - iii. Close the park to non residents;
    - iv. Impose hours of limitations; and/or

- v. Boat ramp can either be either closed (i) permanently to all, (ii) closed to all but city residents or (iii) closed to all but city residents who own property in the plat.
  - c. Option Three (Vacation with Park reservation)
    - i. Blended approach from Options One and Two above.
    - ii. Ordinance pass to designate the reservation of right of way 100 feet from shoreline as a park;
    - iii. Construct pollution abatement and water quality improvements across the roadway to clean the water;
    - iv. Close the park to non residents;
    - v. Impose hours of limitations;
    - vi. Boat ramp can either be either closed (i) permanently to all, (ii) closed to all but city residents or (iii) closed to all but city residents who own property in the plat; and/or
    - vii. Vacate the right of way 100 feet from shoreline, reserve park, drainage and recreational easement to the City;
    - viii. Limit access for police enforcement.
- 3. Proposal for Venetian can be evaluated for Perkins and Swann
- 4. The following proposal for Cross Lake West is offered:
  - a. Option One (Vacation):
    - i. Vacate the right of way 60 feet from shoreline, reserve access for police enforcement, for city resident pedestrian access, drainage and for any lawful use or right of use that runs to any lot which is subject of the plat.
    - ix. Reservation can be the middle 20 feet of the 50/60 foot roadway.
    - x. Property will revert to the two abutting landowners subject of the reservation and subject to the rights under the plat, as implied by law.
  - d. Option Two (Designation as a Park versus Roadway):
    - i. Ordinance pass to designate the right of way 60 feet from shoreline as a park,
    - ii. Construct pollution abatement and water quality improvements across the roadway to clean the water, subject to the access to the McGinnis lot
    - iii. Close the park to non residents,
    - iv. Impose hours of limitations,
    - v. Boat ramp can either be either closed (i) permanently to all, (ii) closed to all but city residents or (iii) closed to all but city residents who own property in the plat.
  - e. Option Three (Vacation with Park reservation)
    - i. Blended approach from Options One and Two above.
    - ii. Ordinance pass to designate the reservation of right of way 60 feet from shoreline as a park, but acknowledge the access to McGinnis

- iii. Construct pollution abatement and water quality improvements across the roadway to clean the water
- iv. Close the park to non residents,
- v. Impose hours of limitations,
- vi. Boat ramp can either be either closed (i) permanently to all, (ii) closed to all but city residents or (iii) closed to all but city residents who own property in the plat.

DRAFT



Bob Francis &lt;bfrancis@belleislefl.gov&gt;

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## Your request

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Bob Francis <bfrancis@belleislefl.gov>  
To: adammcguinnisesq@hotmail.com

Wed, Apr 11, 2018 at 10:11 AM

Adam - The petition that you gave to the City Clerk for the Council agenda on April 17 was reviewed by the City Attorney and he found it to contain deficiencies, lack required information and it fail to meet the minimum requirements for consideration of the requested vacation and abandonment for a portion of a plat under the Section 50.33 of the City Code and Section 177.101, Fla. Stat. Therefore it cannot be considered for formal action by the Council at the April 17 meeting. However, even though the Council cannot act on the request at the next meeting, I could still put it on the agenda for Council discussion, if you so desire, as they stated at the last meeting they are interested in knowing what you intend to use the land for. If the Council agrees to move forward with your request, then the Council will provide direction to the City staff to work with you to satisfy the needed requirements so they can take official action at a future meeting.

Here are other concerns that the City has. The petition is ambiguous as, among other things, it is entitled "waiver of riparian rights" whereas it appears to be proposing to vacate and abandon a portion of the right-of-way or public rights therein. Since you and John have not provided any title work or surveys supporting the petition or a sketch of description of the proposed areas to be vacated, did you intend for that binder you gave to us at our meeting suffice for these items?.

The City Attorney has other concerns that you have not complied with the public hearing notice requirements of Section 50.33 of the City Code or of Section 177.101, Flat. Stat. concerning this petition. If not, then it is not possible to meet the public hearing requirements in order to consider the petition at the next regular Council meeting. Also, the form of the resolution provided is insufficient, it is not in proper form and contains mistakes. There will also be an application fee for processing these request which we will let you know the amount.

When we met, that you said you were doing basically the same thing that John Walker did to purchase his property. I get that, but I was not the City Manager at that time, nor had the same City Attorney, so we cannot comment on that process, or lack thereof, that was used for John's purchase.

Please let me know if you have any questions. Thanks.

Sincerely,

*Bob*

Bob Francis, ICMA-CM  
City Manager  
City of Belle Isle, FL

1600 Nela Ave.  
Belle Isle, FL 32809  
(407) 851-7730 (O)  
(407) 450-6272 (C)  
bfrancis@belleislefl.gov



**DECISION OF THE BOARD OF COUNTY COMMISSIONERS  
ORANGE COUNTY, FLORIDA**

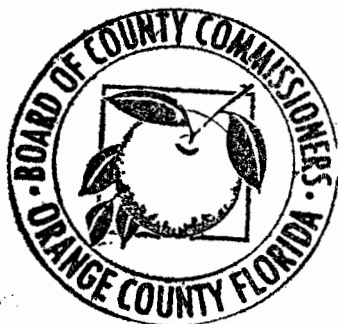
ON NOVEMBER 3, 2015, THE BOARD OF COUNTY COMMISSIONERS CONSIDERED THE FOLLOWING APPLICANT'S REQUEST:

APPLICANT: JOHN WALKER


CONSIDERATION: A REQUEST FROM JOHN WALKER TO PURCHASE LAND OWNED BY THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT FUND FOR PROPERTY LOCATED AT CROSS LAKE DRIVE, ON LAKE CONWAY, PURSUANT TO ORANGE COUNTY CODE, CHAPTER 33, ARTICLE II, SECTION 33-41, SPECIAL DISTRICTS, LAKE CONWAY WATER AND NAVIGATION CONTROL DISTRICT.

LOCATION: DISTRICT 3; SECTION 18, TOWNSHIP 23 SOUTH, RANGE 30 EAST; ORANGE COUNTY, FLORIDA (LEGAL PROPERTY DESCRIPTION ON FILE IN ENVIRONMENTAL PROTECTION DIVISION)

UPON A MOTION, THE BOARD OF COUNTY COMMISSIONERS PROVIDED A RECOMMENDATION OF NO OBJECTION TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION – TRUSTEES OF THE INTERNAL IMPROVEMENT FUND FOR THIS PARCEL IN DISTRICT 3.



THE FOREGOING DECISION HAS BEEN FILED WITH ME THIS 10TH DAY OF NOVEMBER 2015.

  
\_\_\_\_\_  
DEPUTY CLERK  
BOARD OF COUNTY COMMISSIONERS  
ORANGE COUNTY, FLORIDA

*Note: This document constitutes the final decision of the Board of County Commissioners on this matter. If, upon the Board's subsequent review and approval of its minutes, an error affecting this final decision is discovered, a corrected final decision will be prepared, filed, and distributed.*

np

- **Sec. 33-41. - Purchase of submerged land, islands, sandbars, swamp and overflow lands; application, notice, hearing.**

(a)

The applicant or applicants for the purchase of submerged land, islands, sandbars, swamp and overflow lands, including all sovereignty lands from the Trustees of the Internal Improvement Fund of the State of Florida shall, concurrently with the filing of said application with the trustees of the internal improvement fund, file a copy of same with the district, together with such other information as said district may require. The governing authority of the district shall then set a public hearing and publish notice of such public hearing one (1) time in a newspaper of general circulation in the area this [that] is qualified to publish legal notices at least one (1) week prior to said public hearing. Said notice shall state the legal description of the land to be purchased, together with a general description of the land to be purchased. An affidavit of proof of publication shall be furnished to the board before its consideration of said application. The said governing authority shall further cause notices to be sent by mail or personal service to each of the upland or other property owners within five hundred (500) feet of the land to be purchased, and such other property owners as the said governing authority deems might be adversely affected by the proposed sale of said land; and such notices shall be substantially the same as are required to be published in a newspaper, as hereinbefore provided; that all municipalities or other public agencies who may be affected by the sale of said land shall also be notified by mail as hereinbefore provided.

(b)

At said public hearing the said governing authority of the district shall consider what recommendations it will submit to the Trustees of the Internal Improvement Fund of the State of Florida. All of the proponents and opponents of the sale of said land shall be heard by the said governing authority at said public hearing and the said governing authority shall then determine its recommendations, which recommendations it shall immediately cause to be submitted in writing to the trustees of the internal improvement fund.

(c)

In considering their recommendations, the said governing authority may obtain such engineering and other data and hear such testimony under oath as it may deem necessary.

(d)

The board shall assess such filing fees and costs as may be necessary for the filing, processing and determination of the application to purchase submerged lands; provided however, such fees and costs shall not exceed ten dollars (\$10.00).

(e)

The recommendations of the board as submitted to the trustees of the internal improvement fund, irrespective of whether they be adverse or favorable, shall not in any way affect any subsequent action of the board on an application for a permit or permits to develop said land under the provisions of this act [article].

(Code 1965, § 36-30.16; Laws of Fla. ch. 57-1643, § 16)



## **CITY OF BELLE ISLE, FLORIDA**

1600 Nela Avenue  
Belle Isle, Florida 32809  
(407) 851-7730 • FAX (407) 240-2222  
[www.cityofbelleislefl.org](http://www.cityofbelleislefl.org)

April 3, 2018

Board of County Commissioners  
Orange County Administration Building  
201 S. Rosalind Ave.  
Orlando, FL 32801

RE: Request Approval to purchase Land

Dear Board of County Commissioners:

The City of Belle Isle is requesting the Board of County Commissioners, acting as the Lake Conway Water and Navigation Control District Board approve the purchase of land owned by the Board of Trustees of the Internal Improvement Fund for property located at Cross Lake Drive, on Lake Conway, pursuant to Orange County Code, Chapter 33, Article II, Section 33-41, Special Districts. The location of the property is District 3; Section 18, Township 23 South, Range 30 East; Orange County, Florida. A copy of the legal description is included in the enclosed FDEP application.

A copy of the City's application to Florida Department of Environmental Protection, Division of State Lands, is included with this request.

The City believes this request is in the best interest of the residents of Belle Isle to continue to use this property as a public park and beach as was adopted in the City's 1990 Comprehensive Plan. Thank you for your consideration in this matter.

Sincerely,

Bob Francis, ICMA-CM  
City Manager



Bob Francis &lt;bfrancis@belleislefl.gov&gt;

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**reclaimed lake bottom purchase**

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**Thompson, Vicki** <Vicki.Thompson@dep.state.fl.us>

Tue, Apr 3, 2018 at 3:21 PM

To: Bob Francis &lt;bfrancis@belleislefl.gov&gt;

Cc: "McCall, Cheryl" &lt;Cheryl.McCall@dep.state.fl.us&gt;, "Woolam, Scott" &lt;Scott.Woolam@dep.state.fl.us&gt;

Hi Bob:

I think the application is fine. I need to have our Title and Land Records Section do a quick title review before we start the appraisal process which shouldn't take long.

Also, I have attached the county ordinance relating to the Lake Conway Water and Navigation Control District and purchasing the reclaimed lake bottom. You may already be familiar with this but I thought I should mention it. An example of the approval for the adjacent parcel is attached. We will need a copy of the commissioner's recommendation for your acquisition as well.

I will get the title work started and request bids for an appraisal. If you have any questions, just give me a call.

Thanks

Vicki

**From:** Bob Francis <bfrancis@belleislefl.gov>**Sent:** Monday, April 02, 2018 3:49 PM**To:** Thompson, Vicki <Vicki.Thompson@dep.state.fl.us>**Cc:** McCall, Cheryl <Cheryl.McCall@dep.state.fl.us>; Woolam, Scott <Scott.Woolam@dep.state.fl.us>**Subject:** Re: reclaimed lake bottom purchase

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[Quoted text hidden]

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Dep Customer Survey

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**2 attachments**

**PETITION FOR CITY WAIVER OF RIPARIAN RIGHTS**

IN RE: Matter of John Walker and Adam and Katherine McGinnis

COMES NOW JOHN WALKER and ADAM AND KATHERINE MCGINNIS, Petitioners, and petition the Town Council of the Town of Belle Isle, Orange County, Florida, to waive any Riparian Rights over state owned land within said town limits, and as grounds therefor would show unto the Commissioners the following:

1. That your Petitioners are the owners of the following described parcels of property in the Town of Belle Isle, Orange County, Florida:

John Walker

From the SE Corner of Lot 15, Block A, PLEASURE ISLAND, as per Plat thereof recorded in Plat Book F, Page 140, Public Records of Orange County, Florida; run N 66°30' W along the South line of said Lot 15 a distance of 174.4 ft. to intersect with the Government Meander line for the Point Of Beginning. Continue N 66°30' W 112.2 ft. to the 86.4 ft Contour Line of Lake Conway, thence North-Easterly along said 86.4 ft contour line 50 ft. to the North line of said Lot 15, thence S 66°30' E along said North Lot line 119.05 ft. to intersect with the Government Meander Line, thence S 30°00' W along said Meander line 50.32 ft. to the point of beginning. Containing therein 0.1327 acres more or less.

Adam and Katherine McGinnis

From the intersection of the Government Meander Line with the Southerly line of Lot 1, Block B, PLEASURE ISLAND, according to the Plat thereof as recorded in Plat Book F, Page 140, of the Public Records of Orange County Florida, said point begin 162.9 feet N 66°30' W, of the Southeast corner of said Lot 1, run thence N 66°30' W, along said Southerly line projected 20.8 ft to the Point Of Beginning; thence continue N 66°30' W along said projection 105 feet to the 86.4 contour line; thence Northerly and Easterly along said line 51 feet, more or less, to the North line of said Lot 1, thence S 66°30' E, 105 feet, thence S 28°51'30" West, 50.22 feet to the Point Of Beginning.

And further, your Petitioners have made application to the Florida Department of Environmental Protection to acquire the following described property:

A portion of land lying adjacent to Drive, PLEASURE ISLAND, According to the Plat thereof, As recorded in Plat Book F, Page 140, Public Records of Orange County, Florida. Being more particularly described as Follows: Commence at the Northeast corner of Lot 15, Block A, of said Plat, thence run N 66°30' W a distance of 188.6 feet along the North line of said Lot 15 to the Point Of Beginning; thence continue N 66°30' W a distance of 111.35 feet to the Ordinary High Water Line; thence along the Ordinary High Water Line

for the next Four Courses; Run N 27°25' E a distance of 12.97 Feet; thence run N 14°42'59" E a distance of 12.29 feet; thence run N 25°54'17" E a distance of 12.54 Feet; thence run N 18°41'22" E a distance of 12.43 feet; thence run S 66°30' E a distance of 118.51 feet along the Northwesterly projection of the South line of Lot 1, Block B, of said Plat, to a distance 20 feet prior to the Government Meander Line; thence run S 29°57'30" W a distance of 50.32 feet to the Point of Beginning. Described Property contains 5,725 square feet or .13 Acres more or less.

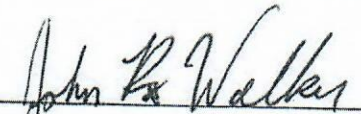
2. That across the last mentioned property, the Town of Belle Isle, Orange County, Florida, may have acquired Riparian Rights over the following described property:


A portion of land lying adjacent to Drive, PLEASURE ISLAND, According to the Plat thereof, As recorded in Plat Book F, Page 140, Public Records of Orange County, Florida. Being more particularly described as Follows: Commence at the Northeast corner of Lot 15, Block A, of said Plat, thence run N 66°30' W a distance of 168.6 feet along the North line of said Lot 15 to the Point Of Beginning; thence continue N 66°30' W a distance of 131.35 feet to the Ordinary High Water Line; thence along the Ordinary High Water Line for the next Four Courses; Run N 27°25' E a distance of 12.97 Feet; thence run N 14°42'59" E a distance of 12.29 feet; thence run N 25°54'17" E a distance of 12.54 Feet; thence run N 18°41'22" E a distance of 12.43 feet; thence run S 66°30' E a distance of 138.51 feet along the Northwesterly projection of the South line of Lot 1, Block B, of said Plat, to the Government Meander Line; thence along said Government Meander Line run S 29°57'30" W a distance of 50.32 feet to the Point of Beginning. Described Property contains 6,725 square feet or .15 Acres more or less.

Said interest may have been acquired by virtue of the plat of J.H. LIVINGSTON's SUBDIVISION as recorded in Plat Book B, Page 133, Public Records of Orange County, Florida, which Plat was recorded on December 1, 1886, and on which plat the last property above described is part of a right-of-way known as Lake Drive. Said interest may have been acquired by virtue of the plat of J.H. LIVINGSTON's SUBDIVISION as recorded in Plat Book F, Page 140, Public Records of Orange County, Florida, which Plat was recorded on April 26, 1923, and on which plat the last property above described is part of a right-of-way known as Drive.

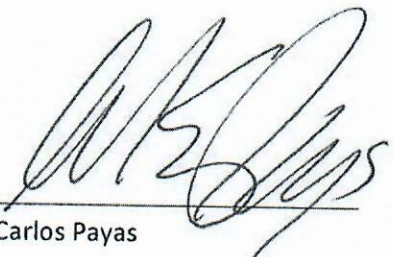
3. To the knowledge of your Petitioners, the adjacent road right-of-way has never been improved in any way whatsoever. To the knowledge of your Petitioners, the Town of Belle Isle, Orange County, Florida may have acquired Riparian Rights over the state owned land. However, the existence of the same casts a cloud upon the title to the property sought to be acquired from the State of Florida, and therefore, your Petitioners desire that the Town of Belle Isle, Orange County, Florida, waive any Riparian Rights it may have in and to the said property last above described.

Respectfully submitted this 30 day of Month 2018.

  
\_\_\_\_\_  
John Walker

  
\_\_\_\_\_  
Adam McGinnis

  
\_\_\_\_\_  
Katherine McGinnis

  
\_\_\_\_\_  
Carlos Payas  
1018 E Robinson Street  
Orlando, FL 32801

**(GENERAL PUBLIC)**  
**APPLICATION FOR PURCHASE OF SURPLUS LAND**  
**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**  
**OF THE STATE OF FLORIDA**

This application is to be used in order to apply for the purchase of surplus land title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (Board of Trustees). If you have any questions, after reading this application form, you may call (850) 245-2720 for assistance.

**SPECIAL NOTE TO ALL APPLICANTS: SUBMITTAL OF A COMPLETE APPLICATION SHALL NOT OPERATE TO CREATE ANY RIGHTS OR CONSTITUTE ANY GROUNDS FOR THE DEPARTMENT TO RECOMMEND APPROVAL OF ANY SALE. THE BOARD OF TRUSTEES HAS THE AUTHORITY AND RESERVES THE RIGHT TO DENY ANY APPLICATION TO PURCHASE SURPLUS LAND. ALL COSTS INCURRED BY APPLICANTS COMPLYING WITH THE REQUIREMENTS OF THIS APPLICATION SHALL BE AT THEIR OWN RISK. COSTS ASSOCIATED WITH PURCHASING SURPLUS LAND ARE NON-REFUNDABLE AND SHALL BE ASSUMED BY THE APPLICANT INCLUDING, BUT NOT LIMITED TO, ALL APPRAISALS, ALL SURVEYS, ALL TITLE SEARCHES, AND ALL RECORDING FEES.**

**PRIOR TO COMPLETING THE APPLICATION PLEASE BE ADVISED THAT:**

Staff will recommend denial of any purchase offer that is less than the Department's minimum sales price for the surplus land proposed for sale.

Real property and improvements shall be sold "as is" with no warranties or representations whatsoever pursuant to Section 18-2.018(3)(b), Florida Administrative Code;

All surplus state land shall be conveyed by quitclaim deed which shall contain an oil and mineral reservation in favor of the Board of Trustees pursuant to Section 270.11, Florida Statutes; and

All sales of surplus state land shall be for cash, cashier's or certified check and all closings shall be in accordance with a sales contract approved by the Board of Trustees.

**Applicant Information:**

Name: Jonathan Walker, Adam and Katherine McChains Home Phone: 407-344-9851  
Mailing Address: 1018 E Robinson Street Work Phone: 407-254-7669  
City: Orlando State: FL Zip: 32801 Fax Number: \_\_\_\_\_  
Email Address: AdamMcChains Esq @ hotmail.com

**Representative Information: Only complete if someone will be handling this transaction on your behalf.**

Name: Carlos Poyas Home Phone: 407-925-7805  
Mailing Address: 1018 E Robinson Street Work Phone: 407-888-8888  
City: Orlando State: FL Zip: 32801 Fax Number: 407-425-1254  
Email Address: \_\_\_\_\_

**Property Information:**

County: Orange Property Appraiser's Parcel Number: N/A  
Section: 18 Township: 23 Range: 30 Zoning Designation: R-1-AA  
Intended Use of Property: Residential

**Include the Following with the Application:**

Most recent available aerial photograph with the surplus property identified.  
 Names and addresses, as shown on the latest county tax assessment roll, of all owners of land lying within 500 feet of the surplus property proposed for sale, certified by the county property appraiser (not required if the parcel does not exceed 5 acres in area).  
 A county tax map identifying the surplus parcel proposed for sale.

**Applicant Property Information:**

Do you the applicant own or have a beneficial interest in any parcel of land adjoining the subject parcel or within a one mile radius of the subject property.  
 If yes, please provide legal descriptions, county tax maps, date purchased, purchase price and any other pertinent information.  
 To the best of your knowledge, does the property that you are inquiring about have any marshy or wet areas?  
Yes  No  If yes please describe:

**Items that you will need to provide during the process, but not at the time of application:**

\_\_\_\_ Payment in the form of a cashier's check or certified check for the cost of the appraisal and any other necessary products. Staff will notify you regarding these costs and when they will be due.  
\_\_\_\_ Two prints of a certified survey of the surplus property meeting the minimum technical standards of Chapter 5J17, Florida Administrative Code, that contain the boundary, legal description, and acreage of the property.

Mail Completed Application with Attachments to:  
Bureau of Real Estate Services  
3800 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000, Mail Station #115



**RESOLUTION**

WHEREAS the attached Petition of JOHNATHAN WALKER and ADAM and KATHERINE MCGINNIS, for Waiver of Riparian Rights over the described state owned land in Paragraph No. 2 of said Petition having been considered by the Council, on Motion of \_\_\_\_\_ for approval thereof, seconded by \_\_\_\_\_ the said Petition was approved, and it is now resolved that the portion of the lands described in the said Petition in Paragraph No. 2 be free of Riparian Rights and those rights granted in favor of Petitioners.

**CERTIFICATE**

I, \_\_\_\_\_, Clerk of the Town of Belle Isle do certify that the foregoing copy of Petition and Resolution are true, literal and exact copies of the resolution that was duly passed by the Town Council of the Town of Belle Isle at its meeting held on \_\_\_\_ day of \_\_\_\_\_, 2018.

WITNESS my signature and the seal of the said Town this the \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Town Clerk

**(GENERAL PUBLIC)**  
**APPLICATION FOR PURCHASE OF SURPLUS LAND**  
**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**  
**OF THE STATE OF FLORIDA**

This application is to be used in order to apply for the purchase of surplus land title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (Board of Trustees). If you have any questions, after reading this application form, you may call (850) 245-2720 for assistance.

**SPECIAL NOTE TO ALL APPLICANTS: SUBMITTAL OF A COMPLETE APPLICATION SHALL NOT OPERATE TO CREATE ANY RIGHTS OR CONSTITUTE ANY GROUNDS FOR THE DEPARTMENT TO RECOMMEND APPROVAL OF ANY SALE. THE BOARD OF TRUSTEES HAS THE AUTHORITY AND RESERVES THE RIGHT TO DENY ANY APPLICATION TO PURCHASE SURPLUS LAND. ALL COSTS INCURRED BY APPLICANTS COMPLYING WITH THE REQUIREMENTS OF THIS APPLICATION SHALL BE AT THEIR OWN RISK. COSTS ASSOCIATED WITH PURCHASING SURPLUS LAND ARE NON-REFUNDABLE AND SHALL BE ASSUMED BY THE APPLICANT INCLUDING, BUT NOT LIMITED TO, ALL APPRAISALS, ALL SURVEYS, ALL TITLE SEARCHES, AND ALL RECORDING FEES.**

**PRIOR TO COMPLETING THE APPLICATION PLEASE BE ADVISED THAT:**

Staff will recommend denial of any purchase offer that is less than the Department's minimum sales price for the surplus land proposed for sale;

Real property and improvements shall be sold "as is" with no warranties or representations whatsoever pursuant to Section 18-2.018(3)(b), Florida Administrative Code;

All surplus state land shall be conveyed by quitclaim deed which shall contain an oil and mineral reservation in favor of the Board of Trustees pursuant to Section 270.11, Florida Statutes; and

All sales of surplus state land shall be for cash, cashier's or certified check and all closings shall be in accordance with a sales contract approved by the Board of Trustees.

<b><i>Applicant Information:</i></b>			
Name: <u>City of Belle Isle</u>		Home Phone: <u>(407) 851-7730</u>	
Mailing Address: <u>1600 Nela Ave.</u>		Work Phone: _____	
City: <u>Belle Isle</u>	State: <u>FL</u>	Zip: <u>32809</u>	Fax Number: <u>(407) 240-2222</u>
Email Address: _____			

<b><i>Representative Information: Only complete if someone will be handling this transaction on your behalf.</i></b>			
Name: <u>Robert Francis, City Manager</u>		Home Phone: <u>(407) 450-6272</u>	
Mailing Address: <u>1600 Nela Ave.</u>		Work Phone: <u>(407) 851-7730</u>	
City: <u>Belle Isle</u>	State: <u>FL</u>	Zip: <u>32809</u>	Fax Number: <u>(407) 240-2222</u>
Email Address: <u>bfrancis@belleislefl.gov</u>			

<b><i>Property Information:</i></b>	
County: <u>Orange</u>	Property Appraiser's Parcel Number: <u>None listed</u>
Section: <u>18</u> Township: <u>23 S</u> Range: <u>30 E</u> Zoning Designation: <u>Open Space</u>	
Intended Use of Property: <u>Public Park/Beach for City of Belle Isle</u>	

<b><i>Include the Following with the Application:</i></b>	
____ Most recent available aerial photograph with the surplus property identified.	
____ Names and addresses, as shown on the latest county tax assessment roll, of all owners of land lying within 500 feet of the surplus property proposed for sale, certified by the county property appraiser ( <b>not required if the parcel does not exceed 5 acres in area</b> ).	
____ A county tax map identifying the surplus parcel proposed for sale.	

<b><i>Applicant Property Information:</i></b>	
____ Do you the applicant own or have a beneficial interest in any parcel of land adjoining the subject parcel or within a one mile radius of the subject property.	
____ If yes, please provide legal descriptions, county tax maps, date purchased, purchase price and any other pertinent information.	
____ To the best of your knowledge, does the property that you are inquiring about have any marshy or wet areas?	
Yes	No If yes please describe:

<b><i>Items that you will need to provide during the process, but not at the time of application:</i></b>	
____ Payment in the form of a cashiers check or certified check for the cost of the appraisal and any other necessary products. Staff will notify you regarding these costs and when they will be due.	
____ Two prints of a certified survey of the surplus property meeting the minimum technical standards of Chapter 5J17, Florida Administrative Code, that contain the boundary, legal description, and acreage of the property.	

<b>Mail Completed Application with Attachments to:</b>
Bureau of Real Estate Services 3800 Commonwealth Boulevard Tallahassee, Florida 32399-3000, Mail Station #115

RECREATION AND OPEN SPACE ELEMENT

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The second type of standard used is the participation rate of the individual facility. This standard requires data to be collected regarding the amount of usage of a particular facility. This standard is designed to meet the specific needs of a specific community. However, an accurate database is needed showing the actual users per facility. The best way to achieve accurate participation rates is to survey the users over a period of several weeks.

It is important to link the population ratio with the participation rate for both parks and facilities. This encourages the coordination of facilities with location, so that a facility that serves 50,000 is not placed in a park serving 5,000 people.

#### B. PUBLIC FACILITIES

The City of Belle Isle has 7 city parks within the corporate limits. There is also one Orange County neighborhood park within the City. This section lists the individual park sites, and the facilities that are offered. Map 3-1 shows the location of the parks within the City. Table 3-3 shows the facilities and acreage for each park.

TABLE 3-3  
PUBLIC PARKS INVENTORY

PARK	FACILITIES	AREA (acres)
Swann Beach	swimming beach/bench	0.25
Delia Beach	swimming beach/bench	0.22
LaBelle Beach	swimming beach/bench	0.11
Cross Lake Beach	swimming beach/bench	0.16
Perkins boat ramp	boat launching ramp	0.33
Venetian Park	boat launching ramp and open park space	1.93
Lagoon	picnic area and open park space	5.00
Warren Park	County facility with ball diamond, swings, picnic tables, pavilions, grills and swimming beach	8.50
Gilbert Park	open space/bench	
Lesser Park	open space/bench	
Conway Circle Pk.	open space/bench	
Holloway Park	open space	

Source: Belle Isle Planning Department, 1990

**1. WARREN PARK**

Warren Park is an 8.5 acre Orange County park. The park is located at the intersection of Warren Park Drive and Seminole Drive, on the east side of the City. Warren Park is a neighborhood park consisting of a baseball diamond, 2 tennis courts, 20 picnic tables, 2 playgrounds, and 0.01 miles of beach on Conway Chain of Lakes.

**2. LAGOON PARK (BELLE ISLE WEST)**

This neighborhood park is the newest park in the Belle Isle park system, scheduled for completion in 1990. The park is located between the Belle Isle West subdivision and the Conway Shores subdivision, in the south part of the City. Although there is a walking/bicycling trail which runs through the park, it remains primarily a passive park with picnic tables and benches. The lagoon has been planted with indigenous water plants as part of an educational program.

**3. VENETIAN PARK**

Venetian Park is a 1.93 acre neighborhood park and is located in the Venetian Gardens subdivision in the northwest section of the City. The two main features of the park are the boat ramp and the large open field. The large open field in the middle of the subdivision is suitable for all types of activity based recreation, such as baseball, softball, football, soccer, and volleyball. The boat ramp area has no parking spaces for cars, however there are six parking spaces adjacent to the large field.

**4. PERKINS BOAT RAMP**

The Perkins boat ramp is 0.33 acres and is located at the intersection of Perkins Road and Lake Drives in the southwest section of the City. There is parking for approximately 3 or 4 cars with trailers and a reserved space for Marine Patrol. The boat ramp is suitable for one boat launch at a time.

**5. CROSS LAKE BEACH**

Cross Lake Beach, 0.16 acres, is located on Cross Lake Road off Oak Island Road in the northwest section of the City. The beach is approximately 50 feet in length. The remainder of the park is open space.

**6. LA BELLE BEACH**

La Belle Beach, 0.11 acres, is found at the south end of La Belle Street in the Belle Isle Court subdivision in the northwest section of the City. The beach is approximately 24 feet in length, with the remainder of the park being open space. This park is used a great deal by canoe and small sailboat owners.

**7. DELIA BEACH**

Delia Beach, 0.22 acres, is located in the Belle Isle Estates subdivision at the east end of Delia Street. The park contains approximately 50 feet of beach and approximately 0.2 acres of open space.

**8. SWANN BEACH**

Swann Beach, 0.25 acres, is located in the Nela Isle subdivision, at the intersection of Lake Drive and Swann Avenue. The beach is approximately 50 feet in length with the remainder of the park as open space.

**9. OPEN SPACE/PARKWAYS**

Belle Isle also has four areas that are public open spaces or parkways. Three of the four areas are located in the Nela Isle (mainland section) subdivision. Only Holloway Park is without a park bench.

Lesser Park is located at Gondola Drive and Conway Circle. Conway Circle Park is located at the intersection of Swann Avenue and Conway Circle. The front lawn of City Hall is also considered as public open space, and is known as Holloway Park. The last parkway is known as Gilbert Park, located at the east intersection of Homewood Drive and Nela Avenue.

**C. PRIVATE FACILITIES**

In Belle Isle, recreation facilities and open space are also provided by private entities. The two types of private entities are homeowner associations and mobile home parks, and are described in this section.

**1. HOME OWNER ASSOCIATION LOTS**

In addition to the City's parks, several of the homeowner associations (HOA) own lots set aside for recreation and open space purposes. There are eight homeowner association lots within Belle



## CITY OF BELLE ISLE, FLORIDA CITY COUNCIL AGENDA ITEM COVER SHEET

**Meeting Date:** April 17, 2018

**To:** Honorable Mayor and City Council Members

**From:** B. Francis, City Manager

**Subject:** Dock Ordinance (Ordinance 18-04)

**Background:** In February 2017, the Council adopted Ordinance 17-02 for the regulation, construction and repair of docks. Since its adoption, there has been difficulty in administering this ordinance due to places where it conflicts with itself. The City Manager requested the City Council to place a moratorium on dock permits until the ordinance could be written to eliminate the conflicts. The moratorium has expired.

The City Manager presented a draft of a new ordinance at the November 7 Council Meeting and an updated ordinance at the November 21<sup>st</sup> meeting incorporating the changes directed by the City Council.

At the November 21<sup>st</sup> meeting, the Council recommended new changes to the draft ordinance which are highlighted in the document. This document is now clearer for reviewing applications against the regulations; does not conflict with itself; and is not confusing as it does not allow for misinterpretation.

At the February 6, 2018 Council Meeting, the Council approved final changes to the Dock Ordinance and directed it be sent to the Planning and Zoning (P&Z) Board for their review and recommendations. The P&Z Board recommended changes to the ordinance. Most of those changes were for sentence structure, grammar, or to make a passage clearer so they were not highlighted in this version of this draft.

At the April 3, 2018 Council Meeting, the Council discussed the recommendations by the P & Z and directed that the ordinance be put in final form and read for the 1<sup>st</sup> time by title only at the April 17, 2018 Council meeting.

**Staff Recommendation:** Briefly discuss any remaining items and approve the ordinance for a first reading.

**Suggested Motion:** I move that we read Ordinance 18-04, Docks for the first time by title only

**Alternatives:** Do not approve ordinance and provide further direction to city staff

**Fiscal Impact:** None

**Attachments:** Draft of Ordinance 18-04

**ORDINANCE No.: 18-04**

**AN ORDINANCE OF THE CITY OF BELLE ISLE, FLORIDA; AMENDING THE BELLE ISLE LAND DEVELOPMENT CODE, CHAPTER 48 ARTICLE II CONCERNING DOCK REGULATIONS, INCLUDING BUT NOT LIMITED TO PERMITTING, CRITERIA, EXCEPTIONS, REQUIREMENTS, MAINTENANCE, REPAIR, VARIANCES, APPLICATION PROCEDURES, DEFINITIONS, NONCONFORMING DOCKS, NUMBER, LOCATION, AND RELATED MATTERS; PROVIDING FINDINGS BY THE CITY COUNCIL; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, Citizens of the City of Belle Isle have expressed concern to the City Council about the scope and extent of regulation of docks within the City; and

**WHEREAS**, on March 21, 2017, the City Council adopted Ordinance No. 17-02 amending Chapter 48, Article II the City Land Development Code with respect to dock regulations; and

**WHEREAS**, the City Council has determined that further amendment to Chapter 48, Article II of the City Land Development Code is necessary in order to further improve and clarify the City's dock regulations and to respond to the concerns of citizens of Belle Isle; and

**WHEREAS**, the City of Belle Isle Planning and Zoning Board serves as local planning agency for the City; and

**WHEREAS**, the Planning and Zoning Board, acting in its capacity as the City's Local Planning Agency, has duly considered and recommended approval to the City Council of the revisions to the dock regulations effected by this Ordinance at a public meeting on March 27, 2018; and

**WHEREAS**, the City Council has found and determined that the adoption of this Ordinance is in the interests of the public health, safety and welfare, will aid in the harmonious, orderly and progressive development of the City, and serves a valid public purpose.

**BE IT ORDAINED** by the City Council of Belle Isle, Florida:

**SECTION 1. Recitals.** The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this ordinance.

**SECTION 2. Amendment of Land Development Code.** Chapter 48, Article II of the City Land Development Code is hereby repealed in its entirety and replaced with the following:

**ARTICLE II. - DOCKS**

**Sec. 48-30. – Definitions**



The following words, terms and phrases, when used in this article, will have the following meanings unless the context clearly indicates a different meaning:

Access walkway means that portion of the dock that commences on the upland parcel and extends to and terminates at the junction with the terminal platform.

Boat(s) means all inboard and outboard motorized and nonmotorized vessels, including, but not limited to, rowboats, sailboats, canoes, kayaks, skiffs, rafts, dugouts, dredges, personal watercraft, paddleboards, and other vehicles of transportation for use on water, including any and all objects tied to or connected therewith while being propelled through the water.

Boathouse means a roofed structure constructed over or adjacent to water to provide a covered mooring or storage place for boats.

Boathouse lot means a lot that is waterfront and was platted as a "B" lot to a primary "A" lot under the same parcel identification number and serves as a lake access lot for the parcel with the primary "A" lot having a principal structure.

Dock means any permanently fixed or floating structure, slip, platform (whether covered or uncovered) extending from the upland into the water, capable of use for boat mooring and other water-dependent recreational activities. The term "dock" also includes the area used to dock or moor a boat, and any device or structure detached from the land that is used for or is capable of use as a swimming or recreational platform, boat lift and/or for other water-dependent recreational activities, or as a platform for non-boating use. This term does not include any boat that is temporarily docked, moored, or anchored for less than 72 hours in any one day.

Linear shoreline frontage shall mean the width of lot measured in a straight line between the two outermost property corners at the NHWC.

Maintenance means the act of keeping the dock in a safe and useable condition consistent with original design specifications.

Mooring area means the portion of a docking facility used for the mooring of boats.

Normal High Water Contour (NHWC) means the horizontal location of the theoretical shoreline when the lake level is at the Normal High Water Elevation as defined herein. This is more specifically the horizontal location of the surface ground elevation points which match the Normal High Water Elevation as defined herein.

Normal High Water Elevation (NHWE) means the water surface elevation of Lake Conway and its directly connected water bodies as defined by Orange County. As of December 2016 the NHWE was 85.45, NAVD 88.

Personal watercraft (Florida Statutes 327.39) means a vessel less than 16 feet in length which uses an inboard motor powering a water jet pump as its primary source of motive power and

which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

Principal structure means the building or structure in which the principal use of the parcel or lot is conducted. A dock shall not be the principal structure on a parcel or lot.

Principal use means a use of the upland parcel for residential, commercial or governmental purposes.

Private dock means a dock, which may be used by only those persons living on the upland parcel and their usual and customary guests.

Projected property line means a continuation of, and extension to, the upland property line. In cases of privately owned bottomland, that is, non-sovereignty submerged lands underlying a water body; the projected property line is the actual property line.

Public dock means a dock which is subject to public access. Docks associated with governmental and non-governmental institutions, and private organizations are included in the definition of public dock.

Repair means to restore to the permitted design specifications of a dock structure, including the replacement of the entire dock or portions of the dock.

Semi-private dock means a dock, which may be used by a group of residents living in and authorized by a subdivision association or multifamily development and their usual and customary guests.

Slip or boat-slip means a space designed for the mooring or storage of a single boat.

Terminal platform means that portion of a dock beginning at the point where the lateral width of the dock exceeds the maximum allowed width of the access walkway or provision is made for mooring boats. The terminal platform shall be designed for the mooring and launching of boats, or other water-dependent activities.

#### Sec. 48-31. - Application process.

(a) Permit and review. Any person desiring to construct a new dock, repair an existing non-conforming dock or add to an existing dock, regardless of whether it is made of wood or another material, within the city shall first apply for a permit to the city. The City shall determine for a pre-existing dock, whether a permit for repair is necessary under sec. 48-34 below. The city shall review the application for completeness and sufficiency as to whether all data, documentation, and materials required herein are provided and shall contact the applicant if the application fails to meet any of the requirements set forth in this section. After an application has been deemed complete and sufficient by the City, the City shall perform a site review of the proposed dock location.

(1) City's administrative review fees. Application fees shall be in accordance with the city fee schedule. The administrative review fee does not include the City of Belle Isle building permit's processing fee.

(2) Application. The applicant shall submit a completed city dock application, a survey and five sets of plans showing the proposed dock. The application shall be available in the city hall office.

(3) The survey of the property, performed within the last three (3) years, shall be a boundary survey signed and sealed by a surveyor holding a current license with the State of Florida and certifying to the applicant and the City accuracy of the information listed below. A survey greater than three (3) years old may be submitted if it includes an affidavit by the owner stating there is no change to the information in the survey.

(i) Lot lines or boundaries of the upland area;

(ii) Location, date and elevation of the edge of water;

(iii) Location of any wetlands vegetation both upland or aquatic;

(iv) Any fences, docks, bulkheads, seawalls, ramps, buildings, paths or walkways or any structure on the upland and lake area;

(v) The NHWC line across the property;

(vi) The location of Elevation 79.5 (NAVD 1988) of the lake bottom within ten (10) feet of the proposed dock;

(vii) The location of Elevation 80.0 (NAVD 1988) contour of the lake bottom within ten (10) feet of the proposed dock.

(4) The plans shall include a scale drawing(s) signed and sealed by a professional licensed professional engineer or architect and accompanied by five (5) copies that provide accurate information as to each of the following elements:

(i) An arrow indicating the northerly direction and an indication of the scale to which the drawing was prepared. All drawings must be drawn utilizing an industry standard engineering scale;

(ii) The dimensions of the property, and the length and location of the proposed dock, or dock addition, as measured from the NHWC to the point most waterward of the NHWC, and identify the licensed contractor who will be installing or constructing the improvements;

(iii) The exact distance between the shoreward end of the proposed dock and two permanent objects (e.g., house, tree) to be used as reference points;

(iv) The exact distance of setbacks from adjacent property lines and projected property lines to the nearest portion of the proposed dock and mooring area, and an approximation of the distance from the closest dock on each side of the property;

(v) The deck and roof elevation of the proposed dock, boathouse or other structure connected to the dock;

(vi) Location of any water lines, electrical outlets or sources, hose bibs;

(vii) All items of the survey in (3) above; and

(viii) Location of lifts, hoists, mooring pilings and mooring areas of any boat.

(5) Building permit. Following the approval by the city of a dock application, the applicant is also required to obtain a building permit from the City of Belle Isle building department prior to commencing construction. In the event electricity is run to the dock, the proper electrical permit must also be obtained from the City of Belle Isle building department.

(6) Each dock length will be measured perpendicularly from the NHWC to the most waterward point on the dock. A distance from two fixed objects or structures on each lot shall be referenced on the dock permit application plans.

(b) Commencement and completion of construction. All construction must be commenced, or completed, or both, within the guidelines established by the City of Belle Isle building department. The applicant is responsible for all fees associated with the procurement of the necessary permits.

(c) The approved permit is valid for one year from the date of the application.

Sec. 48-32. - Design criteria.

(a) Dock applications shall be reviewed under the following design criteria:

(1) Setbacks. Private docks shall have a minimum side setback of five (5) feet from the projected property lines of all abutting waterfront properties. Public and Semi-private docks shall have a minimum side setback of twenty-five (25) feet from the projected property lines of all abutting waterfront properties. For purposes of setback, the terminal platform includes any moored boats or intended boat mooring area. Any reduction from the minimum side setback will require a variance.

(2) Length. The lakeward end of the terminal platform shall be allowed to project to the greater of:

(i) Where the lake bottom has an elevation of 79.5 (NAVD 88);

(ii) 15 feet lakeward of the point where the lake bottom has an elevation of 80 (NAVD 88); or

(iii) 40' from the NHWC

(3) Total area. The terminal platform of the dock collectively may not exceed the square footage of ten times the linear shoreline frontage for the first 75 feet of linear shoreline frontage and then five times the linear shoreline frontage for each foot in excess of 75 feet thereafter, and the total of each when combined shall not exceed a maximum of 1,000 square feet. A maximum terminal platform area of 400 square feet shall be allowed for properties with less than 40' of linear shoreline frontage. The area for the docking and mooring of boats and other appurtenances is included in the terminal platform area calculation

(4) Height. Except for floating docks, the minimum height of dock decks shall place them one foot above the NHWE of Lake Conway. The maximum height, which is to be measured from the top of the structure, shall be 14 feet above the NHWE of Lake Conway.

(5) Access Walkway. Access walkways shall be a minimum of four and a maximum of five feet in width. The area for a walkway shall not be included as part of the total area for the dock.

(6) Number and location of docks:

(i) No dock shall be allowed to extend greater than 15 feet lakeward of an existing dock within 300 feet of the proposed location for the dock or dock addition without a variance.

(ii) No dock construction permit shall be issued on a lot or combination of lots that does not have a principal structure first located thereon.

(iii) Only one dock per principal structure that is located on a lot or combination of lots shall be allowed on any such lot or combination of lots.

(iv) Dock(s) that are privately owned or attached to private property shall only be permitted on lots or combinations of lots zoned or used for residential purposes, and no docks shall be permitted on any lot or combination of lots used for agricultural, commercial, professional-office and/or industrial purposes. If the permit is for a combination of lots, the dock shall be built on the lot where the principal building is located.

(v) Dock(s) that are semi-private or owned by a homeowners association (HOA) or governmental agency shall be adjacent to and attached to upland property that is semi-private or owned by the HOA or public agency. These docks shall be exempt from the provisions of subsection 6 (ii) of this section so long as the HOA, public agency, or other relevant owner owns the attached upland property and is the applicant. Only one dock

per parcel may be located on the property. The term "parcel" as used in this subsection (v) shall mean all contiguous property owned by a HOA or by a public entity.

vi) All dock(s) shall be permanently affixed to the lake bottom, and shall be subject to the provisions of this article.

vii) A floating structure, unless it is associated with a permanent dock, shall be considered a separate dock subject to all provisions of this article.

viii) A floating structure shall be considered to be associated with a dock, if it is installed within the boat slip area, is attached to the dock, or is immediately adjacent to a side of the dock. In no case shall any floating structure extend the permitted length of a dock or extend into the side yard setback, or violate other relevant restrictions.

ix) Notwithstanding any other regulation to the contrary, no dock shall extend across more than 50% of the linear shoreline frontage. The linear shoreline frontage shall be measured in a straight line between the two outermost property corners at the NHWC.

(b) Dock or Boathouse on canal lot:

(1) Boathouses and docks on canal lots are subject to this article and the additional requirements of this subsection (b), notwithstanding that the lots along the canals interconnecting with Lake Conway within the city were platted and accepted by the city under the premise that these lots would serve as lake access for the residents of the associated parcel.

(2) Docks on canals are limited to the edge of the canal, and only if the proposed dock does not impede or restrict the boat traffic in the canal.

(3) The length, size and location of a Dock on a canal are further limited to no more than a width of 14 feet along the canal frontage if boat traffic in the canal is not impeded or restricted by the proposed Dock.

(4) A navigable travel way of 15' width along the axis (center) of the canal shall be maintained between all docks and potential docks.

(c) Restrictions. All docks are subject to the additional restrictions below:

(1) No dock or work for or on a dock shall be within areas which constitute easements for ingress or egress, or for drainage held by individuals or the general public.

(2) No flat roofs. Minimum roof pitch (slope) is 2:12; Maximum roof pitch (slope) is 5:12.

(3) No structure having enclosed sidewalls shall be permitted on any dock. The term "enclosed" shall include, by way of example but not by limitation, plastic, canvas and other screening enclosures, chain link and lattice fencing, or any form of paneling. For the purposes

of this section, a power curtain canvas, boat lift canopy skirt, retractable canopy curtain, or any other similar product made for the protection of a boat will not be considered as a dock enclosure.

(4) Under no circumstances shall a dock be used, permitted or occupied as living quarters, or as a bunk house, enclosed recreational use, or for any other non-water related use.

(5) Storage lockers shall not exceed 30 inches in height above the deck and 67 cubic feet of volume. Storage lockers on a dock shall not be used to store boat maintenance and/or repair equipment and materials, fuel, fueling equipment, and hazardous materials or hazardous wastes. Storage lockers are prohibited on semi-private or publicly owned docks.

(6) Any permit to place, locate, extend, expand, use or otherwise construct a dock, whether along Lake Conway or any canal or any other water body within the City, is subject to and shall not be construed as inconsistent with any law or regulation of the State of Florida or the United States. In addition, in granting or denying any application under this article the City may consider whether the proposed construction or activities would create unreasonable interference with the riparian or littoral rights of one or more nearby property owners, or the general public, as determined by the City in its discretion. As used in this subsection (6), “unreasonable interference” shall include but not be limited to situations in which a proposed structure or activity would impede access to, ingress to, or egress from the relevant body of water by boaters, swimmers, and others with a right to utilize the water body; encroaches upon, intersects, or otherwise interferes with commonly traveled boat routes or established watercraft channels; creates an unusual configuration of the shoreline that restricts boating access within navigable sections of the waterway; unreasonably impairs the view of the water body from one or more other waterfront properties; or otherwise unreasonably impairs or encroaches upon a riparian or littoral right held by one or more property owners or the general public under the law. Notwithstanding the foregoing, the City does not represent or guarantee that a dock or other permitted activity under this article will not affect a riparian or littoral right held by a property owner or the public, which rights are by law subject to local government regulations such as those contained in this article, and the City disclaims to the extent consistent with the law any liability for claims related to such.

Sec. 48-33. – Dock Variances.

(a) In the event the applicant wishes to construct, expand, extend, or repair a dock, or conduct any other activity not meeting one or more of the criteria or requirements described in section 48-32, a variance application must be made for hearing by the Belle Isle Planning and Zoning Board. Application fees shall be in accordance with the city fee schedule.

(b) The board shall not approve an application for a variance unless and until each of the following criteria have been met:

(1) The dock shall not create conditions hazardous to navigation nor any safety hazards;

(2) The location and placement of the dock shall be compatible with other docks in the area, and the NHWC of the lake;

(3) The current level of the lake shall not be a factor in deciding whether to approve or deny a variance

(4) The application does not confer a special benefit to the landowner over and above the adjoining landowners and does not interfere with the rights of the adjoining property owner to enjoy reasonable use of their property; and

(5) The requirements of subsection 42-64(1) Variances except for subsection 42-64(1)d (hardship).

Sec. 48-34. - Dock maintenance and repair and minor modifications.

(a) *Dock maintenance and repair, responsibility of property owner.* The owner of property on which a dock is located is responsible for maintaining a dock in safe and useable condition. Every dock and associated structures shall remain adequately supported, not create debris or obstructions, and shall be maintained in sound condition and good repair, so as to prevent negative impact on adjacent properties or waterway use and recreation.

(b) *Maintenance and repair of docks.* When maintenance and repair of docks involves the repair or replacement of pilings or other portions of the dock at or below the water surface, or of any roofed structure, the permit holder shall submit an application for a permit pursuant to section 48-31 of this article. Maintenance or repair of the deck surface of a dock that does not involve activity at or below the water surface, or of any roofed structure, is allowed without notice or permit, except that all such maintenance and repair activities must maintain the original design and original footprint of the dock and structures located on such dock or associated therewith.

(c) *Nonconforming "grandfathered" docks.* A dock that was duly permitted and authorized by the County when under County jurisdiction, or by the City under a previous version of the City's dock regulations, which dock does not conform with the City's current dock regulations under this article, shall be considered a "grandfathered" dock and shall be an authorized legally non-conforming structure, with the exception of those docks that have active permits or enforcement actions on them at the time of the passage of this ordinance. Except for maintenance and repair activities allowed by this article, the expansion or modification of a legally non-conforming (or "grandfathered") dock is not permitted except in situations where: (i) the dock is brought into conformance with the then current dock regulations of this article, or (ii) the city determines that the dock will be modified in such a way as to substantially decrease or mitigate the dock's non-conformity with the current dock regulations of this article. However, when a grandfathered dock is damaged or requires any maintenance or repairs, the costs of which equal or exceed 75 percent of the then current cost to reconstruct the dock, such maintenance or repair shall not be permitted unless the dock is brought into compliance with the current regulations under this article and any other relevant City regulation.



(d) *Minor modifications to permitted docks.* Minor modifications to all existing docks must be approved by the city. The applicant must submit a request for the proposed deviation change or modification to the original site plan to the city manager for consideration. Additional information may be requested from the applicant in order to complete the review. Minor modifications must comply with the provisions of this article. Any modification that may require a variance or waiver of any provision of this article shall not be considered a minor modification. Any modification that increases the size of the terminal platform or increases the horizontal or vertical footprint of the dock shall not be considered a minor modification. The city manager may require notification of abutting waterfront property owners of the application for minor modification. City approval or disapproval shall include a statement regarding requirement or no requirement for a permit.

(e) When repair of an existing dock is subject to a new permit by the City, an applicant shall provide to the City the prior dock permit and survey whether issued by Orange County or the City. The City shall determine whether or not the proposed repair necessitates a permit under this section. The applicant shall have the burden of proof to show the dock preceded any dock regulation of Orange County or the City or provide the prior permit and survey for the dock.

Sec. 48-35. - Violations; penalties; enforcement.

(a) It shall be unlawful for any person to violate any provision of this article, or any provision of any resolution enacted pursuant to the authority of this article. Any person who violates this chapter, or any provision of any resolution enacted pursuant to the authority of this article, may be prosecuted in accordance with Chapter 14 of the Belle Isle code.

(b) In addition to the enforcement and penalty provisions provided in Chapter 14, the city may avail itself of any other legal or equitable remedy available to it, including without limitation, injunctive relief or revocation of any permit involved.

(c) Any person violating this article shall be liable for all costs incurred by the city in connection with enforcing this article or any provision of any resolution enacted pursuant to this article, including without limitation, attorneys' fees and investigative and court costs.

(d) If the code enforcement officer determines that construction is occurring without prior approval or not in accordance with these regulations, the code enforcement officer shall promptly issue a written notice of violation to the applicant and/or designated contractor. The notice of violation shall include a description of the site where the violation has occurred, cite the provisions of these regulations, general or special laws which have been violated, and set forth the remedial action required by the city. Such remedial action may include submittal of revised drawings, reapplication for a permit, double the permit fee, removal of dock, and administrative and civil penalties.

**SECTION 4. Codification.** This Ordinance shall be incorporated into the Land Development Code of the City of Belle Isle, Florida. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical and similar or

like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this ordinance or the Land Development Code may be freely made.

**SECTION 5. Severability.** If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

**SECTION 6. Conflicts.** In the event of a conflict or conflicts between this Ordinance and any other ordinance or provision of law, this Ordinance controls to the extent of the conflict, as allowable under the law.

**SECTION 7. Effective Date.** This Ordinance shall become effective immediately upon adoption by the City Council of the City of Belle Isle, Florida.

**FIRST READING:** \_\_\_\_\_, 2018

**SECOND READING:** \_\_\_\_\_, 2018

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2018, by the City Council of the City of Belle Isle, Florida.

CITY COUNCIL  
CITY OF BELLE ISLE

\_\_\_\_\_  
Lydia Pisano, Mayor

ATTEST:

\_\_\_\_\_  
Yolanda Quiceno, City Clerk

**Belle Isle Issues Log  
4/17/2018**

<u>Issue</u>	<u>Description</u>	<u>Start Date</u>	<u>POC</u>	<u>Expected Completion Date</u>	<u>Completed Action</u>	<u>Next steps</u>
Cornerstone Charter Academy Stormwater Discharge issue	In November, Orange County made City aware of turbidity issue with storm water discharge from CCA Property to OC Storm pipe. OC may fine City is not corrected.	1/11/2016	CM/CE	4/30/2018	Water sampling revealed that there are high levels of nitrogen causing algae blooms. OCEPD reviewing fertilizer put on the field. Harris Engineering to use GPR to find any unrecorded pipes. City will divert water from drainage ditch to Wallace Field.	<b>Need to purchase materials and build system.</b>
Gene Polk Park (Delia Beach)	Drainage issue at Gene Polk Park caused erosion problems and makes the park unattractive. At least 3 plans have been developed for the drainage and Council allocated \$180,000 to correct the problem.	4/3/2017	CM/CE	9/30/2018	CM met with neighbors to go over plan. Neighbors will review plan as a group and then present their comments to City.	Construction plans are complete. <b>Contract documents changed so delay in approval process. Agenda item for May 15 Meeting</b>
Street Paving	Council approved project for paving several streets in the City. Middlesex Paving is the contractor	8/12/2017	PW/CM	9/30/2017 Completed	Paving of Windsor Place, Lake Conway East, Venetian, Peninsula, and McCawley completed.	Start to look at paving other streets for FY2017-18 Budget.
Storm Drainage	Several individual projects are being looked at to complete. St. Partens, McCawley Ct., Swann Beach, 3101 Trentwood.	4/3/2017	PW/ENG	5/31/2018	City Manager determined areas that need to have a priority of work for stormwater fixes. Working with the Engineer to address these areas	Construction plans being developed for St. Partins, Wind Drift, Nela Ave, and area near St. Moritz , and Dorian Ave. FEMA Funding requested
Traffic Studies	Council allocated funds for traffic study at Trentwood/Daetwyler Rd. Council directed city-wide traffic study to improve traffic flow.	4/3/2017	CM/Eng.	12/31/2018	Trentwood Study completed. Temporary Speed Humps are installed on Flowertree and Trentwood.	<b>Mattamy Homes is now considering funding a new chicane. One more speed hump to be added to Trentwood/Flowertree. Traffic Study to begin in May.</b>
Fountain at Nela/Overlook	Council approved funding to convert the planter at Nela/Overlook to a fountain.	4/3/2017	CM	8/31/2018	Contacting fountain installers for quotes. Art work to be contest for residents. Initial Quotes received were for \$75K and \$51K without art work.	G'Werks to do fountain. Centerpiece ordered (12-14 weeks). Should see demo of roundabout soon.
Standardize Park Signage	Council held a workshop on June 14 to discuss park issues. Standardize signage was one of the issues. Council reviewed proposed signs and directed to move forward.	6/14/2017	CM	9/30/2018	New signs will be made and replace the current signs for parks. Meeting with sign maker on August 1st. New signs in for design	<b>Next year budget item</b>

**Belle Isle Issues Log  
4/17/2018**

Standardize Boat Ramp Signs	Council held a workshop on June 14 to discuss boat ramp issues. Standardize signage was one of the issues. Council reviewed proposed signs and directed to move forward.	6/14/2017	CM	6/30/2018	New signs will be made and replace the current signs for ramps. Perkins and Venetian ramps will have same rules. Lake level closure decided. New signs in for design. Sign Maker making new Perkins Ramp Sign. Venetian being designed. Fence at Venetian installed.	<b>Venetian sign is ready for pickup at vendor. Perkins Sign installed.</b>
Wallace/Matchett Area	City purchased large area at Wallace/Matchett for open space. Issues with Wallace Street Plat in this area with people trespassing on private property. District 2 Comm. And CM met with residents to discuss solutions. Council met on June 14 and issues was discussed. Council directed that a fence would be erected around property. Dist. 2 Comm. and CM to meet with residents to discuss options for Wallace Street plat. Area is still zoned R-2.	6/14/2017	Dist.2 Comm and CM	9/30/2018	Fence quotes received. Zoning change in progress. Agreement for CCA use of the field being sent to school (waiting school response)	<b>Zoned OS. Meeting held with residents in area. Fence for Wallace Field ordered.</b>
Perkins Boat Ramps	Council discussed issues at June 14 meeting for Perkins ramp . Rules need to be put in place according to Ordinance 18-20. Perkins also needs to be upgrade with new fencing, ramp construction and road and dock construction. New drainage also needs to be installed. Council allocated \$38,.000 to drainage.	4/3/2017	CM	12/31/2017	Closure level agreed upon. New sign is at sign maker. Fencing is delayed due to lack of materials (wood). Starting the process to complete other issues (drainage, fill in the void at end of the ramp, wheel stops on ramp, trailer parking). New fence at Perkins Ramp.	<b>Dock is completed. Surveyor to place gauge and ramp markers next week. Void at end of ramp filled and wheel blocks are in place.</b>
City acquisition of Property	Council discussed possibility of acquiring parcels within the City and directed City staff look at	3/20/2018	CM	8/31/2018	Staff is identifying possible parcels for purchase or other means of acquiring property.	<b>Working with State on purchase of Cross Lake. Inquiry made to another property.</b>
Charter School (CCA)	There has been infrastructure issues at Cornerstone for some time. The City owns the property and leases it to CCA. The City is responsible for replacing major systems at CCA according to the lease.	4/3/2017	CM	Ongoing	Once CFP is developed, then a joint agreement will be developed outlining which entity is responsible for maintenance costs.	<b>Capital Facility Plan complete. City getting estimate to replace HVAC. CCA considering purchase of property.</b>

**Belle Isle Issues Log  
4/17/2018**

Short Term Rental	Council discussed short term rentals and directed staff prepare paper for April 17 Meeting	3/20/2018	CM	8/31/2018	Staff is preparing information on short term rentals.	Agenda item for April 17.
Strategic Plan	The City currently has no Strategic Plan. Strategic planning is the process to develop a vision of what the City would like in 10, 15, or 20 years, based on forecasted needs and conditions. It defines goals and objectives to achieve those goals. It is not the same as the Comp Plan.	4/3/2017	Council/CM	Ongoing	Council to decide if it wants a Strategic Plan and then to set up a process for developing the plan. If Council moves forward, an outside consultant should be hired to contact the meetings, gather the information, conduct the surveys and develop the draft plan.	Need guidance from council on when they want to do planning.
Bird Sanctuary Designation	The City has an ordinance designating Belle Isle as a Bird Sanctuary; however it is not recognized by the state (FWC). In speaking with the FWC Regional Director, the city has not applied for the designation IAW Florida Statutes. The Council would like to have BI recognized as a bird sanctuary hoping that it will protect many of the birds that call Lake Conway home.	4/3/2017	CM	12/31/2017	Application completed per Florida Statutes and sent to FWC for consideration at FWC January Meeting. New ordinance adopted IAW FWC guidelines and FAL 68a-19.002	Appeal in progress.
Social Media Policy	City Council expressed concerns that there were postings to social media sites that were not representative of the City government views. The Council requested a social media policy be developed.	4/3/2017	CM	<b>Completed 7/18/2017</b>	Policy drafted. Council review on 7/18/17. Council adopted policy on 7/18/17 Applications received for social media Specialist. CM to review applications and schedule interviews.	<b>Specialis hired. FB page up. Issue Closed</b>
Municipal Code Update	The City Council contracted with a planner to update the municipal code. This process was not completed and needs to be completed. There have been significant code changes in the past few	4/3/2017	CM/CC	Ongoing	Meet with consultant to determine what was done and what is left to do.	It was determined that no code revisions have been completed. In progress
Comp Plan Updates	The comp plan is reviewed every 7 years to see if it needs to be updated. The City Council contracted with a planner to update the comprehensive plan. In March, the consultant told the Council that the plan is up to date and no changes are necessary. CM believes that changes are needed. They could be made anytime.	3/1/2017	Council Planner CM	Ongoing	Meet with consultant to determine what was done and what is left to do.	Any changes should go to P&Z Board for recommendation to Council. No changes were made. Comp Plan review started by CM

**Belle Isle Issues Log  
4/17/2018**

Annexation	Council discussed the desire to annex contiguous property in order to build the tax base and possibly provide more commercial development in Belle Isle.	4/3/2017	Council CM	12/31/2017	Council to determine the priority to annex especially with the establishment of the Pine Castle Urban Center on S. Orange Ave. CA provided information to Council on annexation. Workshop should be scheduled to discuss.	Workshop held on 1/11/18. Council discussion at February meeting. Staff reviewed documents. Report is being compiled
Sustainability	Council discussed sustainability and energy initiatives.	4/3/2017	CM	12/31/2107	Look at LED lighting and Solar power for city facilities. Look at Community Garden (possibly at Wallace/Matchett)	Due to hurricane installation is delayed until March 1.
Tree Issues	There have been several issues regarding trees, tree care, and concerns on landscaping requirements to save trees. The City recently created a Tree Advisory Board that will review the standards of tree care and the processes involved in tree care, removal, and protection.	11/21/2017	CM Tree Board	3/31/2018	Tree Advisory Board to review current tree ordinances and processes for tree care, removal and protection.	<b>Tree ordinance back to Tree Board for further changes. Arbor Day is April 28 at Wallace Field.</b>