



## MEMORANDUM

**To:** Daniel Smith, Director of Community Affairs  
**From:** Alan L. Gabriel, City Attorney *AG*  
**Copy to:** Michael A. McNees, City Manager  
**Re:** Comprehensive Plan Update - Vacation Rentals  
**Date:** March 24, 2021

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Pursuant to your request we are providing you the following memorandum with respect to the City's Comprehensive Plan Update. As part of the City's Comprehensive Plan Update, there have been discussions related to whether the City has the legal authority to include goals, policies, or objectives related to vacation rentals, and whether such business use may be permitted, regulated or simply prohibited through the Comprehensive Plan.

Basically, vacation rentals are allowed in residential areas because the Florida Legislature has adopted legislation that applies statewide. Section 509.032(7), Fla.Stat. specifies as follows:

(7) **PREEMPTION AUTHORITY.**—

(a) The regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state. This paragraph does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.

(b) **A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals.**

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Section 509.032(7), Fla.Stat., specifically prohibits a local government from banning or regulating vacation rentals: "A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals." A "vacation rental" is a "condominium" or a "house or dwelling unit" rented on a transient basis. *See*, 509.242(c), Fla.Stat. By definition vacation rentals serve the transient and vacationing public, but hotels, motels, inns, and resorts provide other services to the non-transient public, including dining, entertainment, and other personal services.

The preemption does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011. The preemption would therefore apply to any provision included in the City's 2021 Comprehensive Plan Update currently being considered by the City's Planning Board, and then by the City Council. Due to the preemption, the City does not have the legal authority to include any goals, objectives, or policies within the City's 2021 Comprehensive Plan Update currently under consideration.