



Vacation Rental Virtual Community Meeting - Questions Asked

1. Why aren't vacation rentals considered businesses? And if they are businesses why are they allowed in residentially zoned districts?

The operation of a vacation rental property is a business. The activity that takes place at a vacation rental, however, is residential in nature. That is why a local government cannot necessarily regulate the rental of a single family home being utilized as a vacation rental as a business. Unless the activity at the location of the vacation rental consists of business transactions, the delivery of supplies and inventory, or the carrying on of business activity, the activity occurring at a vacation rental can be similar to what takes place at any other residence, and is not subject to regulation as a business. Beside "home occupations" by right as and accessory use, the City also allows private schools, adult daycare, childcare, and group care facilities as a Conditional Use in residential districts.

The City's code Sec. 30-81 identifies the intent and purpose of residential single-family dwelling (RSF) districts. It also lays out accessory uses, and conditional uses allowed in these districts, including home occupations. While "home occupation" uses does not include vacation rentals, the land development code (Sec. 30-404) does not clearly prohibit rentals in a RSF district.

2. Why can't the City enforce occupancy limits now?

Pursuant to Florida Building Code (FBC) 101.2, single-family homes are excluded from the provisions of the Florida Building Code - Building (FBC-B). Single-family homes must, instead, comply with the provisions found in the Florida Building Code – Residential (FBC-R). The FBC-R does not contain occupant load limits.

Pursuant to Section 633.208(8)(a), Florida Statutes, the provisions of the Life Safety Code, as contained in the Florida Fire Prevention Code, do not apply to one-family and two-family dwellings. Therefore, the Fire Department has no authority to enter these structures to conduct any inspections, outside of a Fire or Medical Emergency.

Also, the City of Marco Island Land Development Code only regulates density, not occupancy.

The City is also limited in its ability to limit the number of individuals who reside in a dwelling. The ability to place a specific limitation on the number of individuals who can reside in a home is limited by the Fair Housing Act, and potential discrimination claims due to treatment of different “family” groups. If the City were to place a specific numerical limit on the number of individuals who can reside in a home, the City could be subject to a claim of discrimination if a “family” were to be cited for exceeding the specific number of individuals permitted to reside in a residence.

3. What is the cost to purchase a software system to generate an inventory of rental properties on the Island?

Depending on the company selected and the modules purchased, the cost is between \$45,000 - \$150,000.

4. Can we get a copy of the presentation that was given at the virtual meeting?

Yes, it was emailed to those who registered for the meeting. If you would like a copy email clucius@cityofmarcoisland.com.

5. Was the Land Development Code valid when it was passed in 2001?

Yes. The current land development regulations were adopted in 2001. Changes have been made since then but for the most part the residential sections have stayed the same. The land development regulations are deemed to be legal and valid unless a court rules otherwise.

6. Are hotels and motels considered vacation rentals?

No.

The definitions of hotel, motel, and vacation rental are found in Section 509.242, Florida Statutes, as follows:

509.242 Public lodging establishments; classifications.—

(1) A public lodging establishment shall be classified as a hotel, motel, nontransient apartment, transient apartment, bed and breakfast inn, timeshare project, or vacation rental if the establishment satisfies the following criteria:

(a) Hotel.—A hotel is any public lodging establishment containing sleeping room accommodations for 25 or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated or by the industry.

(b) Motel.—A motel is any public lodging establishment which offers rental units with an exit to the outside of each rental unit, daily or weekly rates, offstreet parking for each unit, a central office on the property with specified hours of operation, a bathroom or connecting bathroom for each rental unit, and at least six rental units, and which is recognized as a motel in the community in which it is situated or by the industry.

(c) Vacation rental.—A vacation rental is any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project.

In addition, the definition of a “transient public lodging establishment” which is used to define a “vacation rental” is provided in Section 509.013(4)(a)1., Florida Statutes, and reads as follows: “any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.”

7. Why is a 3 or 4 bedroom vacation rental allowed to have 20 or 30 people staying there?

See the answer to question number 2.

8. What would be needed to apply occupancy limits in a single-family home?

A local ordinance with a registration process that designates vacation rentals as a business (or home occupation) and requires a fire inspection in order to receive a local permit. The registration process could provide for limitations on the number of guests per square feet in the vacation rental, and could impose a fine for violating the occupancy limits.

9. How do the problems on Marco Island compare to other resort areas?

Many cities in the state of Florida are having similar issues with vacation rentals, however, cities like Naples and Sanibel had ordinances in place prior to June 1, 2011 that allow them greater leverage over regulating vacation rentals. Other cities like Fort Myers Beach and the City of Largo have instituted registration requirements. We

researched several counties and cities to determine best practices and processes that work within other jurisdictions.

10. Why didn't the staff present a registration ordinance as an option at the virtual meeting?

Formal recommendations will be made to City Council at their meeting on 10/5/20. The purpose of the virtual community meeting was to hear from the community in order to determine the best recommendations for Council.

11. How many citations have been issued at vacation rental properties over the past year?

This question cannot be answered because the Police Department does not track whether or not a residence is a vacation rental or not.

12. Can the City fine someone for making too much noise?

Yes. The police department issues citations if there is a violation of the noise ordinance. The noise ordinance applies to single-family residences as well as single-family residences that are operating as vacation rentals.

13. What would be the intent of having a registration process?

The intent of a local registration would be to identify vacation rental property owners, have the owners provide an emergency point of contact, be able to conduct life safety inspections, ensure the property is properly licensed with the state Department of Business and Professional Regulation, and ensure taxes are being collected by the County.

14. Will the County provide the City with addresses of vacation rentals?

We have asked the County Tax Collector's office for this data and were told that the information is considered confidential financial information that cannot be shared based on Sections 213.053 and 125.104, Florida Statutes.

15. Can the City have a "3 strikes" rule and then remove a vacation rental license?

No. The vacation rental license is issued by the state Department of Business and Professional Regulation ("DBPR"). The DBPR is the state agency that can suspend or revoke a license.

16. Can the Police Department evict tenants at a vacation rental?

No. However, pursuant to 509.141(2), Fla. Stat. the owner/operator of the transient lodging establishment can provide notice to the occupant, in writing as follows: "You are hereby notified that this establishment no longer desires to entertain you as its guest, and you are requested to leave at once. To remain after receipt of this notice is a misdemeanor under the laws of this state."

17. Is there an existing database of rental properties on the island?

No.

18. Are owners notified when there is a problem at their vacation rental? What is the timeframe?

The owner of a residence is notified via certified mail, of any infractions of their property that require a Notice of Violation (NOV). With violations that require a Magistrate Hearing, the notification will be within 10 days of the scheduled hearing.

19. Can the City limit vacation rentals to one week or 30 days?

No. Section 509.032(7)(a), Florida Statutes states that "A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals."

20. Do we know if vacation rentals on the Island are homesteaded?

This information can be obtained by looking up the property address on the Collier County Property Appraiser's Office. The City does not currently look up vacation rentals on this site, but if we learn of a vacation rental property that is improperly claiming a homestead exemption, we will report it to the County.

21. Can we provide a historical timeline of what the City has done on the issue of vacation rentals?

In 2009, the planning board conducted two public hearings on the issue of vacation rentals. In 2014, the planning board took up the issue again and conducted public hearings. In 2015, the City Council passed an ordinance requiring registration, inspections, fees, occupancy limits, and parking registration for guests. This ordinance was passed by the Council in May 2015 and was rescinded in October 2015. In late July

2020, the City Manager developed a cross-department team to research the issues surrounding vacation rentals. Staff established a special email to receive public comment. We presented research and findings to the community in a September virtual meeting. The City Council will hear staff recommendations in October 2020.

22. Why aren't the police being proactive?

The police department is very proactive. With code violations, the police department self generates 6 times as many calls for service than those they are dispatched to.

23. Has the City reached out to VBRO and Airbnb?

Yes, staff conducted conference calls with various private companies that manage and list vacation rentals.

24. Why do other local cities have laws regulating vacation rentals?

Some cities had ordinances in place prior to 2011 so they are "grandfathered" and not limited by current Florida statute. Other cities that we researched have requirements in place as part of a local permitting and registration process. However, local governments cannot prohibit vacation rentals, even if the owner refuses to register locally.

25. Of the 370 noise complaints referenced in the presentation, how many were from rentals?

The data in reference to noise complaints does not differentiate whether or not the property is a rental property.

26. Can neighborhoods form associations and make rules about vacation rentals?

Yes. MICA, Key Marco and Hideaway are associations. Groups of homeowners may decide on their own to form voluntary associations and develop covenants and restrictions as part of the formation of an association. The City would not, however, play a role in the formation of the associations, or the development and associated enforcement of any rules or regulations adopted by the association.

27. Is the City enforcing the MICA deed restrictions?

No. Only MICA can enforce the MICA deed restrictions.

28. Can neighbors call the property owner directly if there is a problem at a vacation rental?

Yes.

29. What's the difference between a registration system and identification system?

An identification system is a software program that the City could purchase from a private company that compiles the address, owners' names and contact information for vacation rental properties. It provides features to be able to communicate with the owners, a 24/7 hotline, a complaint tracking system, and more, depending on what modules are purchased. A registration system would be set up by the City requiring vacation rental property owners to register their property with the City and receive a license or permit. The City Council would determine which of these options the City would undertake.

30. What are the penalties imposed on owners if there are repeated violations?

It depends on the specific violation. In Section 1-14 of the City of Marco Island Code of Ordinances, repeat violations are subject to (i) a fine of up to \$500.00 per violation per day for continuing repeating violations; (ii) by civil citation up to \$500.00 per offense; (iii) by the seeking of injunctive relief through the courts; or (iv) any combination thereof. Each incident of violation shall constitute a separate and distinct violation of the article.

31. Who are the lobbyists and do they represent local hotels?

The lobbyist referred to in the presentation is contracted by the City to lobby the State legislature on behalf of the City and represent the City's interests. Our lobbyist does not have any hotels or motels as clients.

32. If the City had a registration process for vacation rental properties, would the information be made public?

Whether a registration exists will be a decision for the City Council. If they choose to pass a registration ordinance, the records would be public records subject to the Florida Sunshine Law.

33. Can the city pass an ordinance that only applies to vacation rental properties?

A vacation rental registration ordinance would apply to any residence that meets the criteria for a vacation rental as contained within the City's registration ordinance. Ordinances related to noise, parking, landscaping, and other site related regulations would apply to both vacation rentals as well as other residential properties.

34. What is the Facebook group/page referenced in the presentation?

The City maintains several social media sites. There is a specific Facebook page called "Marco Island City Hall" that was referenced in the presentation where information on a variety of topics is posted for the public.

35. How many fines given to renters are actually paid?

The city does not track whether or not the violation is committed by a renter.

All fines that are ordered by the Magistrate are paid, without distinction between whether an out-of-town renter or a local property owner is issued the fine. Any fine order for a first or repeat violation, including those that are deemed irreversible or irreparable in nature, which remain unpaid are filed as liens with the County Court for public records purposes. At the time that there is a change in title, whether transferred or sold, the fine is usually paid by the new owner in order to remove the lien. The amount paid is dependent on what the final order states as the Magistrate is given the authority to modify the fines.

If a citation is paid without the violator contesting and no hearing is required, then it is recorded as a fine paid by the City's finance department. If the citation is contested or the individual is asked to appear at a Magistrate Hearing, then the amount becomes a fine when an order is issued so that the individual is afforded due process.

36. How would code enforcement distinguish between a rental property making noise and property owners who may be entertaining and making noise?

The noise ordinance does not distinguish between rental property and property owners, therefore neither does the police department.

37. What can be done if a house has too many garbage containers?

There is no ordinance in reference to the number of garbage containers that a property may have. The ordinance dictates time frames when the containers can be placed at the curb and where the receptacles must be kept.

38. Can the public nuisance provision be used to eliminate a vacation rental that is a multiple violator?

Pursuant to Section 60.05, Florida Statutes, a City may take action to obtain an injunction to cease the operation of activities which constitute a nuisance at a property. The types of activities which would authorize such an action are provided in Section 823.10, Florida Statutes, and include activities such as prostitution, gambling, drug dealing, and "gang-related activity." In order to obtain an injunction, the City would file a complaint in circuit court against the owner of the property, and must prove through the presentation of testimony and evidence that a nuisance, as defined in the statutes, exists on the property. A judge would then need to issue the order finding that a nuisance exists and granting the City's request for an injunction to cease the rental activity on the property.