

**SHORT TERM RESIDENTIAL USE COMMITTEE
THURSDAY, JULY 22, 2010, 3:30 P.M.
CITY HALL, 100 NORTH ANDREWS AVENUE
1ST FLOOR, FORT LAUDERDALE, FL**

**CUMULATIVE
MEMBER**

		MAR 2010 / FEB 2011	
		Present	Absent
Marilyn Mammano, Chair	P	5	0
H. Collins Forman, Jr., Vice Chair	P	3	1
Larry Isakowitz	P	4	1
Dwight Ledbetter	P	5	0
Ronald Mastriana	A	3	2
Lula Myers	P	5	0
D.J. Parker	P	4	1
Annette Ross	P	4	1

Staff Members Present

Adrienne Ehle, Liaison, Planner III, Planning and Zoning Department
Deborah Rutkowski, Planning Assistant, Planning and Zoning Department
Sharon Miller, Assistant City Attorney
D'Wayne Spence, Assistant City Attorney
Barbara Hartmann, Recording Secretary, Prototype, Inc.

Communication to the City Commission

None at this time.

I. Call to Order

Chair Mammano called the meeting to order at 3:36 p.m.

II. Roll Call

Roll was called and it was noted a quorum was present.

III. Approval of Minutes

Chair Mammano noted a correction on p.7, paragraph 3: she asked that "...as they were asked to modify existing definitions" be deleted.

Motion made by Vice Chair Forman, seconded by Mr. Ledbetter, to approve the June 24, 2010 minutes as corrected. In a voice vote, the **motion** passed unanimously.

Ms. Ehle introduced the City Staff members present.

IV. New Business

a. Chair / Vice Chair Update

Chair Mammano asked Attorney Miller to update the Committee on whether there is a conflict of interest for Vice Chair Forman.

Attorney Miller stated she had spoken with Vice Chair Forman and forwarded him "a reference to a statute." It is her opinion that there could be a conflict of interest while his client's appeal is being pursued. She explained in this case, information is provided to the Committee member in question, who must ultimately decide whether a conflict exists.

Chair Mammano requested further information on "what happens" if a Committee member agrees or disagrees with the determination that conflict may exist. Attorney Miller advised if Vice Chair Forman does not agree, he remains Vice Chair; if other members elect to pursue enforcement action, they would do so. She was not aware of what such enforcement action might involve. If Vice Chair Forman agrees there is a conflict, he would remove himself from the Board or seek a waiver by the City Commission; "if they waived it" he would remain a Board member.

Ms. Ross said since the question of conflict of interest remained, she felt it would be appropriate for Vice Chair Forman to participate in Committee discussions but recuse himself from voting on any issues. Vice Chair Forman said he did not object to this suggestion.

He continued that he had received an email from Attorney Miller on July 19, 2010, referring to "an ethics opinion" and a section of the Florida Statute. After reading these, he had felt neither document was applicable to him. He stated he had not been aware that the City Attorney's Office had determined he had a conflict before today's meeting, and was not presently prepared to respond formally.

He provided a copy of Attorney Miller's email to be included in the record of today's meeting.

Chair Mammano concluded that the issue would be revisited at the next scheduled meeting.

b. Liaison Update

a. Handout: Other Cities' Ordinance Examples

Ms. Ehle provided the Committee with a handout listing the most recent Code Enforcement cases. She advised that some of today's handouts are intended to be read at the members' convenience; they may then contact her with questions and add items to the next meeting's Agenda if they wished.

She continued that Ms. Myers had suggested a more informal setting may be appropriate for the Committee, and she would be glad to arrange this if the members were in agreement. Chair Mammano agreed this would be more collegial, and it was determined that a "round table" setting would be adopted for the next meeting.

c. Staff Presentation:

a. Defining "parameters for use of residentially zoned properties" & Short-Term Rental Types

b. Zoning Comparison:

- 1. City of Fort Lauderdale**
- 2. Lauderdale-by-the-Sea**
- 3. City of Hollywood**

Ms. Ehle noted that one of the handouts contained definitions used in other cities' Codes of Ordinance. She pointed out that this could be useful in understanding what particular terms might mean, as well as "the actual Code regulations that would go along with them." She noted that the definitions do not always "match up" with how the terms are used in other cities' Code.

Attorney Spence referred to the chart showing a summary of how various coastal cities in Florida have addressed the issue of short-term rentals. It lists "zoning-based" regulations, special licensure or permit requirements, and cities that do not have specific regulations to address short-term residential use.

He explained that the definitions included on this handout are "uses within zoning Code rather than definitions:" the chart attempts to show how Code addresses each of these uses. He called the Committee's attention to a use called "resort dwelling," which is defined as a dwelling not rented more than three times per year for less than 30 days in that year, or which is advertised to the public as a place regularly rented to guests for less than 30 days or one calendar month. Attorney Spence observed that some Codes throughout the state address this type of dwelling as "transient lodging establishments."

He noted that Cocoa Beach, for example, does not break down separate uses for hotels, motels, or short-term residential uses. Instead they created a single use called “transient lodging establishments,” and applied the same criteria to all these uses. The criteria include renting the establishment more than three times per year and for less than 30 days or one calendar month. Also included is a list of the zoning districts that permit this use. In some districts, special approval is required for this use.

Vice Chair Forman requested clarification of the notation “Time: Transient” on p.3. Attorney Spence said this means the length of stay for the particular use was not defined other than “transient.” Chair Mammano suggested it could be helpful to get in touch with the cities that use this term in order to learn how the zoning administrator interprets the term.

Attorney Spence moved on to special licensure and permitting, advising that these cities do not handle the issue through the zoning process but require a separate license, permit, or certificate that must be obtained for resort, vacation, or other rentals. Individuals seeking to rent their properties for the periods of time listed in ordinances – usually more than seven and less than 30 consecutive days – must meet specific requirements to obtain such a license or permit. A common requirement is that an individual is registered with the city, so the city can contact him or her if there is a need for enforcement action. He added that these ordinances typically address solid waste removal as well.

He pointed out that Lauderdale-by-the-Sea designates certain zoning districts in which this use would be permitted, or for which the permit can be issued.

Finally, some cities do not have regulations that specifically address the issue of short-term residential use, but use “regular enforcement” to address it within the existing definitions of hotel, bed & breakfast, and other residential uses.

Mr. Ledbetter returned to the question of a definition for “transient,” asking if a term used in an ordinance must appear in a “list of definitions.” Attorney Spence replied some cities have such a list, but it does not include a definition for “transient.” Attorney Miller clarified that the term is defined at the state level. She agreed to provide a copy of the appropriate statute at the next meeting.

Ms. Ross noted there are “transient residents” and “transient lodgers” mentioned throughout the document, and requested clarification of these terms. Attorney Miller said each city will have a different definition or interpretation of these terms. She pointed out that Fort Lauderdale often includes very specific definitions or time periods in its Code.

Attorney Miller continued that parking requirements in Fort Lauderdale differ for residential and hotel/motel uses, as these places have different impacts on neighborhoods.

Mr. Ledbetter asked if it may be assumed that those cities who do not define “transient” and other terms are using the state’s definition. Attorney Miller stated this may not be assumed. Chair Mammano clarified that the copy of state definitions the Committee has requested would be for information only.

Chair Mammano referred to the cities that have no special regulations for these properties, noting that they have categories of usage that include guest houses and transient lodgings. She asked if their ordinances are similar to Fort Lauderdale’s, noting that these uses are not permitted in residential districts. Attorney Spence agreed these ordinances are similar, but noted he was not aware of how enforcement is achieved in these cities. Chair Mammano commented that this could also be useful knowledge for the Committee.

Vice Chair Forman asked Attorney Spence which of the other cities’ codes provided the “most workable” solution from an attorney’s standpoint. Attorney Spence said he did not have an opinion at present.

Ms. Myers observed that Destin might serve as a “very good boilerplate” example the Committee might consider for Fort Lauderdale. Chair Mammano agreed if the Committee seriously considers licensing, documents from cities that have licensing would be very useful to determine if they may be transferable.

d. Discussion

Ms. Ehle recalled that the Committee had previously discussed parameters for duration and uses in various locations, as well as the impacts of residential and transient use, as short-term use “fit[s] somewhere in between.” She asked that they keep in mind the potential impacts of short-term use on the character of a particular neighborhood, particularly “what makes it feel different from residential to transient.”

Attorney Miller agreed with Ms. Ehle that the Committee must deal with potential impacts, including trash, noise, and other considerations, so they can determine “the basis for a valid ordinance” that is supportable in court. She advised that the Committee members should gather facts about these impacts, including their own and their neighbors’ experiences, as evidence for a determination of where it makes sense to “draw these lines.”

She cautioned the Committee that they may need to “stay away ‘from personalities’” such as crew quarters, pointing out that zoning Code does not

allow the identification of a “type of person... [that] gets a certain use,” but addresses the use and its impact.

Chair Mammano stated she has not had personal experience with crew quarters or short-term rentals; she believes that there are ways to distinguish between “residential users,” offering the example of social service facilities. She felt there could be “a good public policy reason” to make these distinctions, including the support for the marine industry shown in the City’s Comprehensive Plan. She suggested special regulations could be carved out for crew quarters based upon the recognition of this industry’s importance to the City.

Attorney Miller clarified that she intended a distinction between the terms “users” and “uses.” “Users” defines an individual person, while “uses” defines a noun.” She explained that different users may be “common to a certain use.”

Ms. Ehle recalled that members of the public had addressed certain short-term uses at the June 24 meeting, including crew quarters, visits to the City before relocation, and housing for medical treatment. She said from a planning perspective, depending upon a specific use, its location, and its length of time, the impacts of these different uses must be considered. She offered the example of vacation use on a beach potentially having less impact than vacation use in a residential zoning district, or how crew quarters may have a different impact if they are located near a waterway.

Vice Chair Forman noted the handout had not included references to crew houses. Attorney Spence explained he had not seen anything relating to crew houses as a use in his research on other cities. Attorney Miller suggested these quarters may be defined as short-term rentals in other coastal cities, as they may wish to “stay away from identifying who uses it.”

Attorney Spence noted there is a common use for “roominghouse/boardinghouse,” although he did not know how similar to crew quarters this use might be.

Mr. Ledbetter stated his research has shown the closest approximation to a crew house is a boardinghouse; however, a boardinghouse does not “fit the character” of crew houses. He added that Fort Lauderdale has more crew houses than “the rest of Florida and the rest of the world combined.”

Chair Mammano said she would like to consider “users versus uses” in greater depth, noting that as a matter of public policy, the Committee may not wish to recommend to the City Commission that boardinghouses be permitted in single-family residential zones; however, if these boardinghouses are limited to use by a certain user, such as members of the Marine Industries Association, it might be possible to gather more support for such a proposal. If short-term rentals were

limited to properties supporting the marine industry, it could also be recognized that “a different type of person” would be using crew quarters.

Attorney Miller stated these would not be legally supportable regulations, explaining that case law recognizes this as an equal protection issue: a distinction may not be made “based on the person,” and an individual not in the marine industry could assert that he or she is being discriminated against if not allowed to live in these quarters.

She recalled that boardinghouses were once a permitted use within the City; however, the practice of renting out bedrooms was being abused, so it was removed from the Code. She noted that instead of bringing back the term “boardinghouse,” the permitted use within a structure must be defined. She cautioned the Committee with regard to establishing uses “just for use by people in the marine industry,” as there is not evidence that crew members “act differently” as a group. She suggested, however, that the Committee consider location, such as establishing crew quarters within a specific distance of a navigable waterway.

She concluded that if specific housing is made available for crew members only, it would be necessary to “think of another way besides zoning” to do so, such as an economic development reason.

Mr. Ledbetter recalled at the previous meeting, the Committee had considered STCW-95 certification as a possible minimum standard for individuals to stay in crew quarters. He asked if this would be legal. Attorney Miller stated this is not a zoning consideration, and again suggested the issue be pursued “from an economic development aspect.”

Ms. Parker noted that the “number-one industry for south Florida” is tourism, while the marine industry is a close second. She felt it might be possible to make an exception for this industry if an ordinance is modified to include its workers due to their economic impact on the City. Attorney Miller again proposed that places in the City could be identified that would permit single-family homes to be rented or advertised for a specific period of time, such as up to three months.

Chair Mammano advised this would be too “open-ended,” and she could not support or recommend allowing short-term rentals in some communities without restricting them to “supporting the marine industry.” She clarified that this may be only one component of the Committee’s recommendation, as they may recommend more or less restrictive policies for different areas of the City.

Vice Chair Forman noted that concerns have been raised regarding his participation in the Committee, as well as concerns regarding the participation of those in favor of crew housing, as there is a feeling this could lead to allowing

more short-term rentals in single-family neighborhoods. He said the Committee is comprised of “different stakeholders and different interests that are competing;” in addition, all such rentals are economic uses, including rental of individual homes for vacationers, as stated by a member of the public at the June 24 meeting.

He continued he felt positive regarding licensure requirements, as this would require “some accountability of the neighbor.” Licensure also removes the problem of “defining ‘users,’” and ensures that the licensee operates “to a certain expectation.”

Vice Chair Forman explained he comes from a property rights perspective, and this means he does not feel the City has clear Ordinances on the subject of short-term residential use, which is “why this Committee exists.” He felt the City would be more effective if it developed a clear Ordinance; until that time, “people are in a very difficult position.” He added that he presumed crew quarters are allowed unless a specific zoning category states they are not, while the City takes the position that any use not specifically listed in a zoning district is a prohibited use. He stated this is the approach of a civil code state, while Florida is a common law state.

He concluded that next month’s discussion could include coming up with “something that is as broad as possible, but has as many safeguards in it as possible, so that there is accountability.”

Ms. Parker stated she felt the Committee was brought together because each member brings his or her own area of expertise to the panel. She felt they represent a cross-section of the City.

Ms. Myers suggested that the Committee read the handout on other cities’ ordinances prior to next month’s meeting, and come prepared to discuss it. Chair Mammano agreed, stating the Committee has “enough information” at this time and should begin “the process of getting to the next step.”

Ms. Ross commented that the Committee has spent a good deal of time on the property rights of homeowners who feel they “must rent out their homes” or lose them; she noted that the individuals in her neighborhood who rent these homes are “speculators” rather than homeowners who fear foreclosure. She felt it was important to remember that residents in single-family neighborhoods purchased their homes without the expectation that “neighbors [would] turn over weekly,” weddings would be held, or other short-term uses could occur.

Mr. Ledbetter recalled that at the previous meeting, he had asked if it was possible to provide an overlay map of police nuisance calls to properties. He explained the problem begins with a neighbor who uses a property in a way that

runs counter to the tranquility of a neighborhood, and the police are usually called before Code Enforcement is brought in.

Attorney Miller replied she had contacted the Police Department to learn whether they can determine if a problem arose in connection to a short-term rental or hotel use; however, the Police Department could not provide this information. She advised they are still trying to find a way to provide the information Mr. Ledbetter had requested.

Chair Mammano suggested the Committee could provide their list of short-term rentals subject to Code Enforcement to the Police Department, and determine if they have been called to the addresses for a problem. Attorney Miller agreed she would ask if this was possible.

Ms. Ross asked if the Committee might eventually hold a workshop that is open to the public. Chair Mammano felt this was a good idea, but did not feel they had reached a point at which this would be helpful.

e. Set Agenda for Next Meeting

It was noted that the Committee would discuss other cities' licensing regulations, as well as the state statute definition of "transient."

Ms. Ross asked if the city of St. Augustine could be added to the list of other cities for purposes of comparison.

Chair Mammano recalled that Ms. Ehle had suggested a "brainstorming session" for the Committee members. Chair Mammano also asked that a discussion of public outreach be added to the next Agenda, as well as a discussion of a potential interim report.

f. Other New Business

None at this time.

There being no further business to come before the Committee at this time, the meeting was adjourned at 5:05 p.m.

[Minutes prepared by K. McGuire, Prototype, Inc.]