

**SHORT TERM RESIDENTIAL USE COMMITTEE
THURSDAY, JUNE 23, 2011, 3:30-5:15 P.M.
CITY HALL, 100 NORTH ANDREWS AVENUE
CITY COMMISSION CHAMBERS, 1ST FLOOR
FORT LAUDERDALE, FL**

**CUMULATIVE
MEMBER**

		MAR 2011 / FEB 2012	
		Present	Absent
Marilyn Mammano, Chair	P	3	1
H. Collins Forman, Jr., Vice Chair	P	4	0
Genia Ellis	P	4	0
Larry Isakowitz	P	2	2
Dwight Ledbetter	P	4	0
Ronald Mastriana	A	3	1
Lula Myers	P	3	1
D.J. Parker	A	3	1
Annette Ross	P	3	1
Peter Witschen	A	3	1

At this time there are 10 appointed members to the Board, which means 6 would constitute a quorum.

Staff

Adrienne Ehle, Staff Liaison, Planner III, Planning and Zoning Department
Cheryl Felder, Service Clerk
Deborah Rutkowski, Assistant Planner, Planning and Zoning Department
D'Wayne Spence, Assistant City Attorney
Barbara Hartmann, Recording Secretary, Prototype, Inc.

Communications to City Commission

Motion made by Vice Chair Forman, seconded by Ms. Ellis, to transmit the Committee's recommendations, which include the Committee's motions from the June 23, 2011 meeting and a summary of the Committee's motions from the April 28, 2011 meeting, to the City Commission. In a voice vote, the **motion** passed unanimously. [A copy of the summary is attached to this Communication.]

I. Call to Order

Chair Mammano called the meeting to order at 3:41 p.m.

II. Roll Call

Roll was called and it was noted a quorum was present. Ms. Ehle introduced the City Staff members present.

III. Approval of May 26, 2011 Minutes

Motion made by Vice Chair Forman, seconded by Ms. Myers, to approve the minutes of the May 26, 2011 meeting. In a voice vote, the **motion** passed unanimously.

IV. New Business

a. Election of Vice Chair

Motion made by Mr. Isakowitz, seconded by Ms. Myers, to nominate Mr. Forman to continue as Vice Chair. In a voice vote, the **motion** passed unanimously.

b. Chair / Vice Chair Update

Chair Mammano advised that Attorney Spence had answered a number of questions in a memo sent to Committee members. These questions were posed in light of State law 11119, which addresses the regulation of vacation rentals. She noted that some of the questions were also discussed at the June 7 City Commission Conference Agenda meeting. The law became effective as of June 2, 2011.

Chair Mammano explained that she had requested clarification of the difference between the definitions of the terms “vacation rental” and “short-term residential use.” The latter is the term the Committee has used to refer to the short-term rental of single-family homes; the Chair’s question was whether or not this term could be applied to a vacation rental. Attorney Spence clarified that the acronym STRU describes the type of use of a residential property, while the State’s definition of vacation rentals seems to refer to a subset of the short-term use of residential properties.

Chair Mammano asked if, although short-term vacation rentals are defined as public lodging facilities, they are specifically deemed residential property, and local governance may not treat them differently from other residential property. Attorney Spence responded that vacation rentals are not considered residential property: the statute specifically identifies vacation rental as a use associated with a number of structural types, and typically associated with residential use, such as single-family homes. Therefore the recent law would apply to STRU.

Chair Mammano stated she had asked if the State law preempts the City from regulating STRUs used as vacation rentals, based upon classification, use, and

occupancy, unless the City already had such regulation in place prior to June 1, 2011. Attorney Spence had confirmed this.

Vice Chair Forman asked if the City could pass a licensure provision requiring that short-term rentals must be licensed by the City for that purpose. Attorney Spence stated this would be viewed as a regulation of the use, as it would be accompanied by an enforcement structure for the licensure.

Vice Chair Forman noted that his question would apply to short-term residential uses rather than specifically to vacation rentals. Chair Mammano said because vacation rentals are a subset of short-term residential use, the regulation would apply to them. Attorney Spence emphasized that "short-term residential use," or STRU, is not a defined term, but a description of a type of use of residential property. He pointed out that the new law states if the uses under the STRU umbrella are subjected to a registration requirement that affects what the State calls vacation rentals, the requirement would conflict with the State law.

Vice Chair Forman said while the law applies to vacation rentals, there are other short-term uses of residential property, such as crew housing and sober houses, that are not considered to be vacation rentals. He suggested that all short-term residential uses might be uniformly regulated without singling out vacation rentals. Attorney Spence said the State has identified certain types of residential structures, and states that structures considered to be transient public lodging establishments also meet the definition. He stated he was not aware of the specific definitions of crew quarters, although they seem to fit within the definition of vacation rental "from common knowledge."

Chair Mammano continued that she had asked if Fort Lauderdale did have a regulation in place prior to June 1. Attorney Spence had answered yes. She asked if it was correct that Code prohibits STRUs in residence-only districts that do not permit commercial uses. She noted that Attorney Spence had referred the Committee to a memorandum dated November 12, 2009, "which essentially says yes." Attorney Spence confirmed this.

Vice Chair Forman pointed out that page 1, paragraph 2 of the 2009 memo opens with the words "The City has interpreted short-term rental of residential properties in RS 4-4 and RS 8 districts as a violation of the City's ULDR Section 47-34.1.a.1." He advised that on the following page of the memo, it also states that "the Department is correct that...Fort Lauderdale's Code of Ordinance does not specifically prohibit rental of residential dwellings in a residential zoning district..." He concluded that this appears to be an interpretation.

Chair Mammano said she did not wish to "re-hash the Counsel's memo" of 2009, noting that Vice Chair Forman's interpretation of the memo disagreed with the City's interpretation. Attorney Spence added that the issue has been decided by

a court of law. Vice Chair Forman said that decision is not binding for anyone other than the two litigants involved in a specific case.

Chair Mammano asserted that the City's position is STRUs are not permitted uses by regulation, and the new State legislation does not allow these regulations to "get any less restrictive." She continued that the final question asked if, because the City has successfully defended its position in court, it would continue to prohibit short-term rentals in residence-only districts as long as the courts continue to uphold its position. Attorney Spence's response was that this position was "unaffected by [the State] law." Chair Mammano said she assumed this meant the City would continue to enforce this prohibition.

She continued that the City regulation "can't get any more restrictive," as it already prohibits this use; she asked if it may be made less restrictive, such as permitting vacation rentals in residential districts with specific limitations, such as lengths of stay. The response in the memo stated that the regulation cannot become less restrictive: the use is not permitted in certain residentially zoned districts, and in order to lessen this restriction, new City regulations would be required. New regulations are specifically prohibited by the State law.

Chair Mammano concluded that the Committee may recommend to the City Commission that some accommodation may be made for vacation rentals; however, she stated that the City Attorney's Office would have to advise the Commission that no such accommodation is possible under the new law. Attorney Spence confirmed this.

Vice Chair Forman asked if Attorney Spence was aware of ULDR Section 47-1.14. He noted the statement that "Any use not substantially similar to those permitted or accessory uses listed within a district shall be deemed to be prohibited;" page 3, paragraph 1 of the 2009 memo, however, says "The...Planning and Zoning Director has not placed a specific limitation on short-term rental of property in residential zones." Attorney Spence stated that the 2009 memo reflects the City's position with regard to the enforceability of current Code, and said he would make no further comment on that particular question. He added that the Committee has asked whether or not the City's current regulation of short-term residential uses is "effective and active," and it is the City's opinion that this is the case.

Chair Mammano stated that the Vice Chair was out of order, and that if he disagreed with the City's position, this should be addressed through litigation. Vice Chair Forman asserted that his point was that the Committee is responsible for making a recommendation to the City, which should take the existing situation, as reflected in Code, into account. Chair Mammano said the Committee's job was to make recommendations on what they feel the

Commission's position on short-term rentals should be, based on "all the year's worth of work and testimony that we have taken."

She advised that the Committee has already passed recommendations to the City Commission that state if the City decides to change its position and permit "some type of short-term residential use," there should be licensing and enforcement, among other considerations. They may now advise the City Commission that despite the new State law, the Committee feels there should be "some accommodation of short-term residential uses," such as crew quarters. Chair Mammano noted, however, that even if further recommendations are made, enacting them may be prohibited by the State legislation.

She stated that the City has two options: they may request relief from and flexibility of the new law, which would allow existing restrictions to be lessened, or the marine industry may "fight tooth and nail" against every municipality with an existing restrictive regulation.

c. Liaison Update

Ms. Ehle recalled that the Conference Agenda meeting on June 7 was attended by several Committee members, and the discussion at that meeting provided some clarification on where the Committee can go from here. The Mayor explained that the Committee may meet again for as many times as necessary in order to put together their recommendations. She clarified that the recommendations were made in the form of motions, which may then be forwarded to the City Commission for further discussion. She added that the Commission has expressed a desire to discuss this issue further with the City Attorney.

d. Discussion (continuation): Committee Members' Recommendations

Chair Mammano said she agreed with Ms. Ehle's summary, and stated that the Commission wanted to know what the Committee had "come up with to date." These recommendations were to be sent to the City Commission and forwarded to the City Attorney's Office, which would clarify what action can or cannot be taken with regard to the recommendations.

Motion made by Vice Chair Forman for the transmittal of the recommendations to the Commission.

Ms. Ellis pointed out that the State legislation has "taken away the City's ability to have hometown rule." She felt the law would be challenged by some municipality for this reason. She stated she did not feel the Committee could affect the issue, and felt the cases currently in litigation would "follow their natural course" and eventually be determined in court. She hoped that the Commission would have

the Committee's previous recommendations reviewed by the City Attorney's Office if they wished to proceed with any of them.

Chair Mammano asked if Ms. Ellis would like to **second** the **motion** made by Vice Chair Forman. Ms. Ellis stated she would.

In a voice vote, the **motion** passed unanimously.

Chair Mammano said the Committee may want to make additional recommendations or observations to the City Commission, stating that they recognize there are certain short-term rentals, such as crew quarters, that are of great economic importance to the City. She felt they should urge the Commission to find some way to "regularize the situation" with regard to these quarters despite the new State legislation. She stated the Committee had heard a lot of testimony regarding the need for these quarters, as well as testimony about the economic impact of short-term residential uses. She felt that both these issues should be addressed.

Motion made by Chair Mammano to express to the Commission that, based on the testimony and a year's worth of work, there are significant issues raised by short-term residential uses, and that these relate to the economy and the marine industry; and that these are a fact of life and have to be dealt with, [and] they cannot be ignored simply because this legislation has been passed.

Ms. Ellis proposed the amendment that instead of citing a single industry, the Chair could refer to "the crew industry and those of a like kind." Chair Mammano **accepted** the **amendment**.

Ms. Ehle advised that the Chair may not make a **motion**.

Motion made by Ms. Ross, seconded by Vice Chair Forman, that the Committee is advising the Commission that they need to address the situation of crew housing for the marine industry and others, [and] that this is a very real and economic situation that is vital to the City of Fort Lauderdale and needs to be addressed.

Ms. Ross clarified that her **motion** was intended to refer to the "marine industry, hospitality, and like industries."

Chair Mammano offered the **amendment** adding the phrase "based on our year's worth of work and public testimony" at the beginning of the **motion**. Ms. Ross and Vice Chair Forman **accepted** the **amendment**.

In a voice vote, the **motion** passed unanimously.

Ms. Ehle recalled that the Committee had previously discussed the format by which recommendations are sent to the City Commission, and pointed out that the Committee may make a presentation at the July 6 Conference Agenda meeting. She suggested that exhibits for this presentation could include the Interim Outline and the minutes from today's meeting.

Chair Mammano said she felt every member who could attend would be present at the July 6 Conference Agenda meeting to answer questions regarding their experiences over the past year. She felt the motions they have made, including the most recent one, would serve to "explain the whole situation" to the City Commission. She reiterated that the Committee felt the Commission should "figure out a way to regulate despite what's happened."

Ms. Ehle requested clarification of the motions to which the Chair referred, asking if this meant also including the summary of the motions made at the April meeting. Chair Mammano said she felt the summary of motions from the April meeting would be sufficient to this purpose. Ms. Ellis proposed that the minutes of the April meeting could be included as an attachment as well.

Chair Mammano continued that the Committee would take direction from the Commission with regard to whether or not they should continue to meet. Vice Chair Forman noted that the Committee does not have the authority to "disband ourselves." Ms. Ehle added that the Resolution forming the Committee did not have a sunset clause. Vice Chair Forman recalled that the Committee had agreed to transmit recommendations to the City Commission by June 2011, not to end the Committee at that time.

Ms. Ehle said if the motions are transmitted in the format of a conference item to the City Commission, this would not be a "communication to the Commission". A communication to the City Commission would be sent right away including the minutes, and go on the Commission's next agenda. If the Committee wanted to have a more detailed discussion at a Conference Agenda meeting, they could choose instead to add an "item" onto the agenda.

Chair Mammano asked to know "the procedure for [the Commission's] discussing" a communication to the Commission. Ms. Ehle said her understanding was that communications would be "the last item in the Conference meeting," and confirmed that it was possible this would be discussed late at night, depending upon time allowed for other items on the Conference Agenda. Ms. Ellis added that it is also possible to ask a Commissioner to call a specific item up for discussion.

Motion made by Vice Chair Forman, seconded by Ms. Ellis, to transmit the recommendations as a communication to the Commission. In a voice vote, the **motion** passed unanimously.

It was clarified that interested Committee members should plan to attend the Conference Agenda meeting on July 6 at 1:30 p.m.

Chair Mammano asked if the City Commissioners have received the memo from Attorney Spence. Ms. Ehle said she did not know. Chair Mammano asked if the memo could be attached to the communication. Ms. Ehle explained that the City Clerk's Office makes the final determination on what may or may not be sent as an attachment to the communication. Ms. Ellis advised that she believed the Commissioners had received the memo in question.

e. Public Comment

Norm Schwartz stated he has lived in Fort Lauderdale for more than 40 years and owns rental properties. He felt that the majority of complaints he has heard are not about whether or not vacation rentals are occurring, but are instead the result of behaviors by specific renters, such as "spring breakers" and other individuals or groups that would not be respectful to their neighbors in a residential district. He felt it was more appropriate to regulate offending behaviors than to regulate an industry. Fines would be levied not only against participants but against the owners who allow problematic behaviors.

V. For the Good of the Committee

None.

VI. Communication to the City Commission

The communication to the City Commission was previously discussed by the Committee.

VII. Announcements

None.

VIII. Adjournment

There being no further business to come before the Committee at this time, the meeting was adjourned at 4:30 p.m.