Reply To: St. Petersburg

March 24, 2025

Via Email to: ***bccagendacomments@mypinellasclerk.gov***
Pinellas County Board Records
315 Court St.
Clearwater, FL 33756

RE: Short Term Rental Ordinance Amendment, Case No. LDR-24-04

Dear Pinellas County Board of Commissioners:

This firm represents a number of vacation rental owners in Pinellas County that have concerns about the revisions to the vacation ordinance currently under consideration, LDR-24-04 ("the Proposed Ordinance"). Our clients support the reasonable regulation of vacation rental use and agree that there are irresponsible tenants and bad managers in the vacation rental industry just as there are bad neighbors who disrupt neighborhoods. However, punishment of the entire vacation rental industry with overly restrictive and burdensome regulation is not the solution to the problems that need to be addressed. We support the County's interest in addressing public concerns regarding short-term rentals, and therefore provide suggestions on revising the Proposed Ordinance to address public concerns with measures that are not overly burdensome for responsible vacation rental property owners, and measures that do not conflict with Florida law.

Since the Pinellas County Code began regulating short-term rentals in 2018 under section 138-3232, its stated purpose has remained the same[1]: to allow for individual dwelling units to be rented or leased for less than one month, while protecting the immediate vicinity from negative impacts such as traffic, noise, and safety concerns. In pursuing this purpose, since being enacted in 2018 Section 138-3232 has identified maximum occupancy, parking limits, noise restrictions, requirements for identification of a responsible party, and posting requirements[2]. The County was presented with several good revisions to the Vacation Rental Ordinance at its February 25,

[1] Changing only slightly in 2021 to add that individual rooms within owner-occupied properties may also be used for short term rentals.
[2] Except for the addition in 2023 of the requirement for short-term vacation rentals within single family detached homes to obtain a zoning clearance per section 138-90.

2025, meeting that would have supported an important industry while addressing remaining concerns but bad experiences with rental situations that were clearly not properly policed under the existing ordinance resulted in a drastic change in direction to staff and counsel in revising the County Code. We would strongly suggest that the County should focus on issues of unregistered vacation rentals and the bad actors who are simply not policing their tenants, such as renting to groups of young adults on spring break or bachelor and bachelorette parties, who allow their tenants to engage in loud and disturbing behavior late into the evenings. We suggest that these real problems can best be addressed by strengthening code enforcement efforts of the existing ordinance or by the addition of new reasonable restrictions related to noise, parking, or other health, safety, and welfare concerns. Just as good neighbors should not be punished by unduly restricted in the use of their homes due to the bad behavior of irresponsible neighbors, nor should those citizens who financially rely on income from use of their property as a vacation rental be subjected to restrictions that make vacation rental use unfeasible.

Local governments must ensure that local ordinances are rationally related to a legitimate general welfare concern. *WCI Communities, Inc. v. City of Coral Springs*, 885 So. 2d 912, 914 (Fla. 4th DCA 2004). To determine whether an ordinance is rationally related to a legitimate general welfare concern, Florida courts assess (1) whether there is a legitimate government purpose which the governing body could be pursuing, and (2) whether "a rational basis exists for the enacting government body to believe that the legislation would further the hypothesized purpose." *Id.* Additionally, local zoning ordinances must bear a *substantial relation* to the public health, safety, morals, or general welfare. *City of Miami Beach v. 8701 Collins Ave.*, Inc., 77 So. 2d 428, 430 (Fla. 1954). Local governments may not exceed the bounds of necessity for the public welfare. *Burritt v. Harris*, 172 So. 2d 820, 823 (Fla. 1965). If an ordinance exceeds the bounds of necessity for the public welfare, it *must* be stricken as an unconstitutional invasion of property rights. *Id.* Although local governments have police power, they may not curtail property owners' constitutional right to make legitimate use of their land "under the guise of police power." *Burritt v. Harris*, 172 So. 2d 820, 823 (Fla. 1965).

The Proposed Ordinance imposes requirements that far exceed necessity, burdening property owners without effectively resolving the public's concerns. For example, the Proposed Ordinance includes ambiguous and overly restrictive occupancy standards based on an arbitrary "bedroom definition" and unnecessary space requirements. Although the Proposed Ordinance's standard for maximum occupancy reverts to terms that have been in the Code since 2018, their *effect* is much different because of the Updated Proposed Ordinance's new and highly restrictive definition of "bedroom". The new definition of "bedroom" mandates minimum square footage, exterior walls, closet requirements, and restrictions on multi-use spaces. These requirements exceed necessity, as they do not serve the public's stated concerns of noise, safety, or late-night disturbances. Instead, they functionally limit property owners' ability to utilize their homes in a reasonable manner. Furthermore, this change disproportionately impacts smaller homes and properties that may have adequate sleeping accommodations but do not fit within this restrictive definition. It also puts an arbitrary limitation on larger homeowners preventing the reasonable use of the entire home.

Additionally, the proposed definition of "bedroom" introduces requirements that conflict with state law. Section 633.206(2)(b), Fla. Stat., prohibits local governments from enacting fire safety standards for transient public lodging establishments that exceed state requirements. The Florida Administrative Code, Rule 69A-43.018(5), sets the occupancy limit for transient lodging at 150 square feet per person. The proposed bedroom-based occupancy restrictions drastically contradicts this standard.

The February Proposed Ordinance's occupancy definition, although still exceeding the fire code, was a far more reasonable balance of public concerns with property rights by including a time frame for occupancy and a "carve out" for children. The current Proposed Ordinance's revised occupancy definition eliminates February's reasonable "11 p.m. to 7 a.m." timeframe and treats children and adults the same. This creates ambiguity regarding when and how occupancy is calculated. The removal of the time-based limitation increases the risk of arbitrary enforcement while failing to directly target disruptive behavior. Moreover, revising the occupancy definition by treating adults and children the same fails to address the issues raised with February draft ordinance. Families with children coming to enjoy our area are not drinking, engaging in lewd activities, causing late night disturbances or driving multiple vehicles creating parking issues.

Florida law explicitly limits the scope of local government regulations concerning vacation rentals. Section 509.032(7)(b) of the Florida Statutes preempts local governments from prohibiting vacation rentals or regulating their duration or frequency. While local governments may implement reasonable regulations to address health, safety, and welfare concerns, these measures must not function as de facto bans on vacation rentals or create an unreasonable, arbitrary or undue burden on their operation or existence. The Proposed Ordinance's revisions, particularly those related to occupancy, parking, and licensing requirements, function as indirect regulation of rental frequency and duration violating the statutory preemption. The mandatory Short-Term Rental Certificate of Use with its biennial inspections, annual renewals, and 24/7 local contact requirements, imposes excessive administrative burdens that will serve to prohibit and limit vacation rentals. The same is true for the parking requirements that are clearly intended to further limit occupancy and are not imposed on any other type of residential property owner in the County.

The Proposed Ordinance fails to directly address the community's primary concerns—namely, noise disturbances, disruptive house parties, and late-night nuisances. Rather than enacting vague and excessive regulations on responsible tax paying property owners, the County should focus on solutions that will enhance enforcement of existing noise and nuisance laws and that target bad actors instead of the entire vacation rental industry and the families relying on them for income or those relying on them for their vacation needs. While we recognize the County's goal of balancing the rights of property owners with the interests of the broader community, the latest Proposed Ordinance imposes excessive restrictions that conflict with Florida law, fail to address public concerns, and unduly burden property owners. As such we urge the Board to reconsider these overly restrictive measures and seek a balanced approach that respects property rights while addressing legitimate community concerns.

In sum, we agree that reasonable regulation of short-term rentals for the welfare of the community is important. However, the regulations must bear a substantial relation to the public's general welfare and the terms must be enforceable. Otherwise, the provisions impose unreasonable burdens on short term rental owners in violation of their property rights while not achieving the stated purpose of the regulations. While our clients will continue to work toward a reasonable compromise on the proposed regulation, the current language poses significant damage to hundreds if not thousands of owners. As your counsel has advised, a local government that enacts an ordinance that is arbitrary or unreasonable or violates statutory preemption provisions, exposes that local government to an award of attorneys' fees.

We will be in attendance at the upcoming BOCC meeting on March 25, 2025 to speak in favor of changes to the currently proposed ordinance and to answer any questions. Thank you for your consideration of our concerns.

Sincerely,

/s/ Kevin S. Hennessy

Lewis, Longman & Walker, P.A.

Kevin S. Hennessy, Esq.

CC: Clients
County Attorney