

ITEM #25 VACATION RENTALS - BACKUP ADDED TO AGENDA 2/2/2021

Graham, Marlene

From: Jacob G. Horowitz <JHorowitz@gorencherof.com>
Sent: Monday, February 01, 2021 10:40 AM
To: Ortis, Frank; Siple, Iris; Castillo, Angelo; Schwartz, Jay; Good, Tom
Cc: Samuel S. Goren; Stamm, Michael; Graham, Marlene; Dodge, Charles
Subject: Item #25 - Vacation Rentals
Attachments: Vacation Rental bill SB 522.pdf

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Mayor/Commissioners,
Good morning.

The City Attorney's Office has received a number of inquiries concerning Item #25 on Wednesday's agenda, pertaining to vacation rentals. As properly stated in Commissioner Schwartz's agenda item, the City is limited in its authority to regulate short-term rentals in the City. Specifically, Section 509.032(7)(b), F.S., states that "A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals." The City is currently authorized to impose certain limited regulations on vacation rentals, including, but not limited to, registration requirements, inspection requirements, requiring responsible individuals to be accessible, etc...

Notwithstanding the foregoing, SB552 (the "Bill") is currently pending in the Legislature. A copy of the Bill is attached for your convenience. The Bill would expressly preempt the regulation of vacation rentals to the state. If adopted, municipalities would not be permitted to regulate vacation rentals, including registration, inspection and licensing thereof. Our office is continuing to monitor the Bill and will update the City Commission, as necessary and appropriate.

We are available to discuss further, offline, if there is any additional information that we can provide.

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By Senator Diaz

36-00597A-21

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1 A bill to be entitled
2 An act relating to vacation rentals; amending s.
3 509.013, F.S.; defining the term "advertising
4 platform"; amending s. 509.032, F.S.; preempting the
5 regulation of vacation rentals to the state;
6 prohibiting a local law, ordinance, or regulation from
7 allowing or requiring inspections or licensing of
8 public lodging establishments, including vacation
9 rentals, or public food service establishments;
10 authorizing a local law, ordinance, or regulation to
11 regulate certain activities under certain
12 circumstances; providing an exemption; expanding an
13 exemption to allow certain ordinances adopted on or
14 before a certain date to be amended to be less
15 restrictive; preempting the regulation of advertising
16 platforms to the state; amending s. 509.241, F.S.;
17 requiring licenses issued by the Division of Hotels
18 and Restaurants of the Department of Business and
19 Professional Regulation to be displayed conspicuously
20 to the public inside the licensed establishment;
21 requiring the owner or operator of certain vacation
22 rentals to also display its vacation rental license
23 number and applicable tax account numbers; creating s.
24 509.243, F.S.; requiring advertising platforms to
25 require that persons placing advertisements for
26 vacation rentals include certain information in the
27 advertisements; requiring advertising platforms to
28 display and verify such information; requiring the
29 division to maintain certain information in a readily

36-00597A-21

2021522__

30 accessible electronic format; requiring advertising
31 platforms to quarterly provide the division with
32 certain information regarding vacation rentals in this
33 state listed on the platforms; requiring advertising
34 platforms to remove an advertisement or a listing
35 under certain conditions and within a specified
36 timeframe; requiring advertising platforms to collect
37 and remit taxes imposed under chs. 125 and 212, F.S.,
38 for certain transactions; authorizing the Department
39 of Revenue to adopt rules; authorizing the division to
40 issue and deliver a notice to cease and desist for
41 certain violations; providing that such notice does
42 not constitute agency action for which certain
43 hearings may be sought; authorizing the division to
44 file certain proceedings and to seek certain remedies
45 for the purpose of enforcing a cease and desist
46 notice; authorizing the collection of attorney fees
47 and costs under certain circumstances; requiring
48 advertising platforms to adopt an antidiscrimination
49 plan and to inform their users of the policy's
50 provisions; providing applicability; providing
51 effective dates.

52
53 Be It Enacted by the Legislature of the State of Florida:

54
55 Section 1. Subsection (17) is added to section 509.013,
56 Florida Statutes, to read:

57 509.013 Definitions.—As used in this chapter, the term:
58 (17) "Advertising platform" means an entity that:

36-00597A-21

2021522__

59 (a) Provides an online application, software, a website, or
60 a system through which a vacation rental located in this state
61 is advertised or held out to the public as available to rent for
62 transient occupancy;

63 (b) Provides or maintains a marketplace for the renting by
64 transient occupancy of a vacation rental; and

65 (c) Provides a reservation or payment system that
66 facilitates a transaction for the renting by transient occupancy
67 of a vacation rental and for which the entity collects or
68 receives, directly or indirectly, a fee in connection with the
69 reservation or payment service provided for such transaction.

70 Section 2. Subsection (7) of section 509.032, Florida
71 Statutes, is amended to read:

72 509.032 Duties.—

73 (7) PREEMPTION AUTHORITY.—

74 (a) The regulation of public lodging establishments,
75 including vacation rentals, and public food service
76 establishments, including, but not limited to, sanitation
77 standards, licensing, inspections, training and testing of
78 personnel, and matters related to the nutritional content and
79 marketing of foods offered in such establishments, is expressly
80 preempted to the state. A local law, ordinance, or regulation
81 may not allow or require the local inspection or licensing of
82 public lodging establishments, including vacation rentals, or
83 public food service establishments. This paragraph does not
84 preempt the authority of a local government or local enforcement
85 district to conduct inspections of public lodging and public
86 food service establishments for compliance with the Florida
87 Building Code and the Florida Fire Prevention Code, pursuant to

36-00597A-21

2021522__

ss. 553.80 and 633.206.

(b) A local law, ordinance, or regulation may regulate activities that arise when a property is used as a vacation rental if the law, ordinance, or regulation applies uniformly to all residential properties without regard to whether the property is used as a vacation rental as defined in s. 509.242(1)(c), the property is used as a long-term rental subject to chapter 83, or the property owner chooses not to rent the property. However, a local law, ordinance, or regulation may not prohibit ~~vacation~~ rentals or regulate the duration or frequency of ~~rental of vacation~~ rentals. The prohibitions set forth in this paragraph do ~~This paragraph does~~ not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011, including when such law, ordinance, or regulation is being amended to be less restrictive with regard to a prohibition or a duration or frequency regulation.

(c) Paragraph (b) does not apply to any local law, ordinance, or regulation exclusively relating to property valuation as a criterion for vacation rental if the local law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.

(d) The regulation of advertising platforms is preempted to the state, and advertising platforms shall be regulated under this chapter.

Section 3. Effective January 1, 2022, subsection (3) of section 509.241, Florida Statutes, is amended to read:

509.241 Licenses required; exceptions.—

(3) DISPLAY OF LICENSE.—Any license issued by the division

36-00597A-21

2021522__

117 ~~must shall~~ be conspicuously displayed to the public inside in
118 ~~the office or lobby of the~~ licensed establishment. Public food
119 service establishments that which offer catering services must
120 ~~shall~~ display their license number on all advertising for
121 catering services. The owner or operator of a vacation rental
122 offered for transient occupancy through an advertising platform
123 must also display the vacation rental license number and the
124 applicable Florida sales tax registration and tourist
125 development tax account numbers under which such taxes must be
126 paid for each rental of the property as a vacation rental.

127 Section 4. Effective January 1, 2022, section 509.243,
128 Florida Statutes, is created to read:

129 509.243 Advertising platforms.—

130 (1) (a) An advertising platform must require that a person
131 who places an advertisement for the rental of a vacation rental:

132 1. Include in the advertisement the vacation rental license
133 number and the applicable Florida sales tax registration and
134 tourist development tax account numbers under which such taxes
135 must be paid before the advertisement may be listed; and

136 2. Attest to the best of his or her knowledge that the
137 license number for the vacation rental property and the
138 applicable tax numbers are current, valid, and accurately stated
139 in the advertisement.

140 (b) An advertising platform must display the vacation
141 rental license number and applicable Florida sales tax
142 registration and tourist development tax numbers. The
143 advertising platform must verify that the vacation rental
144 license number provided by the owner or operator is valid and
145 applies to the subject vacation rental before publishing the

36-00597A-21

2021522__

146 advertisement on its platform and again at the end of each
147 calendar quarter that the advertisement remains on its platform.

148 (c) The division shall maintain vacation rental license
149 information in a readily accessible electronic format which is
150 sufficient to facilitate prompt compliance with the requirements
151 of this subsection by an advertising platform or a person
152 placing an advertisement on an advertising platform for
153 transient rental of a vacation rental.

154 (2) An advertising platform must provide to the division on
155 a quarterly basis, by file transfer protocol or electronic data
156 exchange file, a list of all vacation rentals located in this
157 state which are advertised on its platform, along with the
158 following information for each vacation rental:

159 (a) The uniform resource locator for the Internet address
160 of the vacation rental advertisement; and

161 (b) Unless otherwise stated in the vacation rental
162 advertisement at the Internet address provided pursuant to
163 paragraph (a), the physical address of the vacation rental,
164 including any unit designation, the vacation rental license
165 number provided by the owner or operator, and the applicable
166 Florida sales tax registration and tourist development tax
167 account numbers under which taxes will be remitted for the
168 rentals commenced through the advertisement.

169 (3) An advertising platform must remove from public view an
170 advertisement or a listing from its online application,
171 software, website, or system within 15 business days after being
172 notified by the division in writing that the subject
173 advertisement or listing for the rental of a vacation rental
174 located in this state fails to display a valid license number

36-00597A-21

2021522__

175 issued by the division.

176 (4) If a guest uses a payment system on or through an
177 advertising platform, as defined in s. 509.013(17), to pay for
178 the rental of a vacation rental located in this state, the
179 advertising platform must collect and remit all taxes imposed
180 under chapters 125 and 212 resulting from the rental. When
181 calculating taxes imposed under chapters 125 and 212, an
182 advertising platform may exclude the amount of any fees directly
183 attributable to the service provided by the advertising
184 platform. The Department of Revenue may adopt rules to implement
185 this subsection.

186 (5) If the division has probable cause to believe that a
187 person not licensed by the division has violated this chapter or
188 any rule adopted pursuant thereto, the division may issue and
189 deliver to such person a notice to cease and desist from the
190 violation. The issuance of a notice to cease and desist does not
191 constitute agency action for which a hearing under ss. 120.569
192 and 120.57 may be sought. For the purpose of enforcing a cease
193 and desist notice, the division may file a proceeding in the
194 name of the state seeking the issuance of an injunction or a
195 writ of mandamus against any person who violates any provision
196 of the notice. If the department is required to seek enforcement
197 of the notice for a penalty pursuant to s. 120.569, it is
198 entitled to collect attorney fees and costs, together with any
199 cost of collection.

200 (6) Advertising platforms must adopt an antidiscrimination
201 plan to help prevent discrimination among their users and must
202 inform all users of their services that it is illegal to refuse
203 accommodation to an individual based on race, creed, color, sex,

36-00597A-21

2021522__

204 pregnancy, physical disability, or national origin pursuant to
205 s. 509.092.

206 Section 5. The application of this act does not supersede
207 any current or future declaration or declaration of condominium
208 adopted pursuant to chapter 718, Florida Statutes, cooperative
209 document adopted pursuant to chapter 719, Florida Statutes, or
210 declaration or declaration of covenants adopted pursuant to
211 chapter 720, Florida Statutes.

212 Section 6. Except as otherwise expressly provided in this
213 act, this act shall take effect upon becoming a law.