



## *The Village of Biscayne Park*

600 NE 114th St., Biscayne Park, FL 33161

Telephone: 305 899 8000 Facsimile: 305 891 7241

**AGENDA**  
**REGULAR COMMISSION MEETING**  
**Log Cabin - 640 NE 114th Street**  
**Biscayne Park, FL 33161**  
**Tuesday, November 05, 2019 7:00 pm**

In accordance with the provisions of F.S. Section 286.0105, should any person seek to appeal any decision made by the Commission with respect to any matter considered at this meeting, such person will need to ensure that a verbatim record of the proceedings is made; which record includes the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in the proceedings should call Village Hall at (305) 899 8000 no later than four (4) days prior to the proceeding for assistance.

**DECORUM** - All comments must be addressed to the Commission as a body and not to individuals. Any person making impertinent or slanderous remarks, or who becomes boisterous while addressing the Commission, shall be barred from further audience before the Commission by the presiding officer, unless permission to continue or again address the commission is granted by the majority vote of the Commission members present. No clapping, applauding, heckling or verbal outbursts in support or in opposition to a speaker or his/her remarks shall be permitted. No signs or placards shall be allowed in the Commission Chambers. Please mute or turn off your cell phone or pager at the start of the meeting. Failure to do so may result in being barred from the meeting. Persons exiting the Chamber shall do so quietly.



*Indicates back up documents are provided.*

**1 Call to Order**

**2 Roll Call**

Mayor Truppman

Vice-Mayor Samaria

Commissioner Johnson-Sardella

Commissioner Tudor

**3 Pledge of Allegiance**

**4 Additions, Deletions or Withdrawals to the Agenda**

*At this time, any member of the Village Commission or the Village Manager may request to add, change, or delete items from the agenda.*

**5 Presentation**

- Proclamation - Veteran's Day November 11, 2019
- Presentation from Creepy Critters Pest Control regarding Tree Fundraising - by Dan Samaria

**6 Public Comments Related to Agenda Items / Good & Welfare**

*Comments from the public relating to topics that are on the agenda, or other general topics.*

**7 Information / Updates**

**8 Consent Agenda**

*Items listed under Consent Agenda are viewed to be routine, and the recommendation will be enacted by ONE MOTION in the form listed below. If discussion is desired, then the item(s) will be removed from the Consent Agenda and will be considered separately.*

**8.a Acceptance of Commission Minutes**

- Regular Commission Meeting October 01, 2019
- Special Commission Meeting October 17, 2019
-  • Workshop Discussion on Residents Communication October 17, 2019
- Special Commission Meeting October 24, 2019
- Workshop Review Branding Proposal October 24, 2019

**8.b Resolution # 2019-24 - MOA - Memorandum of Agreement with the City of North Miami - Landscape on median at 121st Street**

 A RESOLUTION OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA; APPROVING THE LANDSCAPE AND MAINTENANCE MEMORANDUM OF AGREEMENT (MMA) BETWEEN THE VILLAGE OF BISCAYNE PARK AND THE CITY OF NORTH MIAMI FOR THE MEDIANS LOCATED ALONG NORTHEAST 121 STREET FROM GRIFFING BOULEVARD TO 10<sup>th</sup> AVENUE; PROVIDING FOR AN EFFECTIVE DATE.

**8.c Resolution 2019-28 - Judo Program**

 A RESOLUTION OF THE MAYOR AND VILLAGE COMMISSION OF BISCAYNE PARK, FLORIDA, AUTHORIZING THE VILLAGE MANAGER TO EXECUTE AN AGREEMENT FOR THE PROVISION OF A JUDO PROGRAM BETWEEN THE VILLAGE OF BISCAYNE PARK AND JOSUE DEPREZ; PROVIDING FOR AN EFFECTIVE DATE.

**9 Ordinances**

**9.a Ordinance # 2019-05 - Special Magistrate - Second Reading**

 AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AMENDING CHAPTERS 14 AND 15 OF THE LAND DEVELOPMENT CODE OF THE VILLAGE OF BISCAYNE PARK; AUTHORIZING SPECIAL MAGISTRATE POSITION FOR CERTAIN CODE ENFORCEMENT PROCEEDINGS; PROVIDING FOR ORDINANCES IN CONFLICT, REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

***Public hearing on proposed Ordinance 2019-05***

**9.b Ordinance # 2019-06 - Commission Rules and Procedures - First Reading**

AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AMENDING SECTION 2-16 OF THE VILLAGE OF BISCAYNE PARK CODE OF ORDINANCES; ADOPTING COMMISSION RULES AND PROCEDURES FOR MEETINGS AND WORKSHOPS; PROVIDING FOR ORDINANCES IN CONFLICT, REPEALER, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

***Public hearing on proposed Ordinance 2019-06***

**10 Resolutions**

*At Consent Agenda*

**11 Old Business**

**11.a** Discussion - Short Term Rental - Village Attorney updates

**11.b** Discussion of Mayor - Change of Leadership - by Dan Samaria



**11.c** Village Attorney Invoices and Future Role - by Dan Samaria

**11.d** Whistleblower Protection for Village of Biscayne Park Employees - by Dan Samaria

**12 New Business**

**13 Request for placement of items on next meeting agenda**

*Through general consensus a member of the Commission may request an item be placed on the next agenda for discussion (New Business) or as a Resolution/Ordinance.*

**14 Reports**

**14.a** Village Attorney

**14.b** Village Manager

**14.c** Board / Committee Reports

**14.d** Commissioners Comments:

- Mayor Truppman
- Vice Mayor Samaria
- Commissioner Johnson-Sardella
- Commissioner Tudor

**15 Announcements**

Planning & Zoning Board, Monday, November 4, 2019 6:30 pm

Charter Review Advisory Board, Thursday, November 7, 2019 6:30 pm  
Biscayne Park Foundation, Wednesday, November 13, 2019 7:00 pm  
Public Art Advisory Board, Thursday, November 14, 2019 6:00 pm  
Planning & Zoning Board, Monday, November 18, 2019 6:30 pm  
Public Safety Advisory Board, Wednesday November 20, 2019 6:00 pm  
Parks & Parkway Advisory Board, Thursday, November 21, 2019 5:30 pm

**Regular Commission Meeting, Tuesday, December 03, 2019 7:00 pm**

**All Village Departments will be closed - Monday, November 11, 2019 - Veteran's Day**

**All Village Departments will be closed - Thursday, November 28 and Friday, November 29, 2019  
- Thanksgiving**

## **16 Adjournment**

# PROCLAMATION

## Veteran's Day

*November 11, 2019*

WHEREAS, on Veteran's Day, our Nation comes together to honor our veterans and commemorate the legacy of profound service and sacrifice they have upheld in pursuit of a more perfect union; and,

WHEREAS, through their steadfast defense of America's ideals, our service members have ensured our country still stands strong, our founding principles still shine, and nations around the world know the blessings of freedom; and

WHEREAS, the selflessness of our service members is unmatched, and they remind us that there are few things more fundamentally American than doing our utmost to make a difference in the lives of others; and

WHEREAS, just as our veterans stood watch on freedom's frontier, so have they safeguarded the prosperity of our Nation in our neighborhoods, our businesses, and our homes; and

WHEREAS, serving as teachers and engineers, parents and local government employees, these patriots have made contributions to civilian life that serve as a testament to their dedication to the welfare of our country; and

**NOW, THEREFORE, LET IT BE PROCLAIMED BY the Honorable Mayor and Village Commission of the Village of Biscayne Park** that all citizens observe the day with appropriate ceremonies in honor of those who have served to preserve the principles of Justice, Freedom and Democracy.



IN WITNESS WHEREOF, I have hereunto set my hand this 5<sup>th</sup> day of November, in the year two thousand nineteen.

---

Tracy Truppman, Mayor



**VILLAGE OF BISCAYNE PARK  
Village Commission Agenda Report  
REGULAR MEETING**

**Item # 8.a**

---

**TO:** Honorable Mayor & Members of the  
Biscayne Park Village Commission

**FROM:** Roseann Prado, Village Clerk

**DATE:** November 5, 2019

**TITLE:** Acceptance of Commission Minutes

---

**Background**

The minutes as listed below are being provided for the Commissioner's review and acceptance.

**Recommendation**

Acceptance at Consent Agenda.

**Attachment**

- Regular Commission Meeting 10 01 2019
- Special Commission Meeting 10 17, 2019
- Workshop Discussion on Residents Communication 10 17, 2019
- Regular Commission Meeting September 10, 2019
- Special Commission Meeting October 24, 2019
- Workshop Review Branding Proposal October 24, 2019

---

Prepared by: Roseann Prado, Village Clerk





## *The Village of Biscayne Park*

600 NE 114th St., Biscayne Park, FL 33161

Telephone: 305 899 8000 Facsimile: 305 891 7241

### **MINUTES**

**Regular Commission Meeting  
Log Cabin - 640 NE 114th Street  
Biscayne Park, FL 33161  
Tuesday, October 01, 2019 at 7:00 pm**

**1 Call to Order**

Mayor Tracy Truppman called the meeting to order at 7:00 pm.

**2 Roll Call**

Mayor Truppman - present  
Vice Mayor Samaria - present  
Commissioner Johnson-Sardella - absent  
Commissioner Tudor - present  
Commissioner Wise - present

Staff present:

Village Attorney Rebecca Rodriguez  
Village Clerk Roseann Prado  
Sergeant of Arms Officer Paul Eppler  
Officer Johnny Bryant  
Finance Director Paul Winklejohn  
Recording: Cesar Hernandez

**3 Pledge of Allegiance**

**4 Additions, Deletions or Withdrawals to the Agenda**

- Mayor Truppman reinstated her objection to item 11.a.  
Commissioner Wise moved to approve agenda as amended. Commissioner Tudor seconded. **Motion passed 4 - 0.**

**5 Presentations**

Proclamation - Red Ribbon Week - ready by Commissioner Wise.  
Proclamation - Hispanic Heritage Month - ready by Village Clerk.

Presentation - Javier Betancourt, Executive Director - CITT and Nestor Toledo.

**6 Public Comments Related to Agenda Items / Good & Welfare**

*Comments from the public relating to topics that are on the agenda, or other general topics.*

The following persons spoke on the record:

Bob Anderson  
Rox Ross

Barbara Kuhl  
Janey Anderson  
Dale Blanton  
Dan Keys  
Chuck Ross  
David Raymond  
Gary Kuhl  
Fred Jonas  
Ramon Irrizarri

**7 Information / Updates**

**8 Consent Agenda**

**8.a Acceptance of Commission Minutes**

- Regular Commission Meeting August 06, 2019
- Special Commission Meeting August 30, 2019
- First Budget FY 2019-2020 Hearing Meeting September 10, 2019 6:30 pm
- Regular Commission Meeting September 10, 2019 7:00 pm
- Workshop Discussion on Meetings Policies and Procedures September 18, 2019
- Second Budget FY 2019-2020 Hearing Meeting September 20, 2019 6:30 pm
- Special Commission Meeting September 20, 2019 7:00 pm
- Workshop Communication September 24, 2019 6:30 pm

**8.b Acceptance of Board Minutes**

- Biscayne Park Foundation minutes May 13, 2019
- Biscayne Park Foundation minutes July 08, 2019
- Biscayne Park Foundation minutes August 12, 2019
- Public Art Advisory Board minutes September 11, 2019
- Public Safety Advisory Board minutes June 26, 2019
- Public Safety Advisory Board minutes August 28, 2019
- Public Safety Advisory Board minutes September 25, 2019

**8.c Resolution # 2019-24 - MOA - Memorandum of Agreement with the City of North Miami - Landscape on median at 121st Street**

A RESOLUTION OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA; APPROVING THE LANDSCAPE AND MAINTENANCE MEMORANDUM OF AGREEMENT (MMA) BETWEEN THE VILLAGE OF BISCAYNE PARK AND THE CITY OF NORTH MIAMI FOR THE MEDIANS LOCATED ALONG NORTHEAST 121 STREET FROM GRIFFING BOULEVARD TO 10<sup>th</sup> AVENUE; PROVIDING FOR AN EFFECTIVE DATE.

**8.d Resolution # 2019-25 - MOA - Memorandum Aid Agreement with the City of North Miami Beach Police Department**

A RESOLUTION OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA; APPROVING A MUTUAL AID AGREEMENT BETWEEN THE CITY OF NORTH MIAMI BEACH AND THE VILLAGE OF BISCAYNE PARK, FLORIDA TO ENSURE PUBLIC SAFETY BY PROVIDING ADEQUATE LEVELS OF POLICE SERVICES; PROVIDING FOR AN EFFECTIVE DATE.

Minutes from Workshop Communication September 24, 2019 was requested to be removed from Consent Agenda by Vice-Mayor Samaria to be discussed. Vice-Mayor Samaria requested the e-mails from Commissioners not attending the meeting to be added to the minutes.

Commissioner Tudor motioned to accept the minutes with the addition of the e-mails. Vice-Mayor Samaria seconded. **Motion passed 4 - 0.**

Village Attorney requested to remove Resolution # 2019-24 from Consent Agenda. Commissioner Tudor motioned to remove Resolution 2019-24. Commissioner Wise seconded. **Motion passed 4 - 0.**

Vice-Mayor Samaria motioned to approve Consent Agenda as amended. Commissioner Tudor seconded. **Motion passed 4 - 0.**

**9 Ordinances**

*None*

**10 Resolutions**

*None*

**11 Old Business**

**11.a Discussion of Mayor - Change of Leadership by Dan Samaria**

Mayor Truppman recused herself and left the Chambers. Commissioner Tudor moved to return the item to November 5th Commission Meeting with more details of the specific allegations and additional background and additional guidance from the Village attorney. **Motion passed 2 -1** (Commissioner Wise opposed).

**11.b Village Attorney Invoices and Future Role - by Dan Samaria**

Vice-Mayor Samaria motioned to hire an auditor to review attorney bills after John Herin to present. No second to the motion. Motion failed.

Commissioner Tudor motioned to direct the Village Manager to find out a cost to audit the attorney's bills. Vice-Mayor Samaria seconded. **Motion failed 2 - 2** (Commissioner Wise and Mayor Truppman opposed). No majority vote.

**12 New Business**

**12.a Discussion - draft Ordinance regarding Special Magistrate**

Consensus to schedule meetings as follows:

- 10/17 - Special Commission Meeting - discussion on draft Ordinance regarding Special Magistrate at 6:30 pm.

- 10/17 - Workshop Residents Communication at 7:00 pm.
- 10/24 - Special Commission Meeting - Ordinance on Special Magistrate - First Reading at 6:30 pm.
- 10/24 - Workshop Review of Branding Proposal at 7:00 pm.
- 11/05 - Regular Commission Meeting - Ordinance on Special Magistrate - Second Reading at 7:00 pm.

**12.b Discussion - draft Ordinance on Commission Procedures**

**12.c Discussion - Vacation Rental Concerns - by Mayor Truppman**

Vice-Mayor Samaria motioned to move forward with recommendations 1 through 4 with the amended version sent to Village Attorney to present at Regular Commission Meeting on November 5, 2019. Commissioner Wise seconded. **Motion passed 4 - 0.**

**12.d Discussion Whistleblower Protection - by Vice-Mayor Samaria**

Commissioner Wise moved to direct the Village Manager determine what are the more accurate costs for this procedure. Commissioner Tudor seconded. **Motion passed 4 - 0.**

**13 Request for placement of items on next meeting agenda**

*Through general consensus a member of the Commission may request an item be placed on the next agenda for discussion (New Business) or as a Resolution/Ordinance.*

**14 Reports**

**14.a Village Attorney**

Updates:

- FEMA claims.

**14.b Village Manager**

**14.c Board / Committee Reports**

**14.d Commissioners Comments:**

- Mayor Truppman
- Vice-Mayor Samaria
- Commissioner Johnson-Sardella
- Commissioner Tudor
- Commissioner Wise

**15 Announcements**

Public Art Advisory Board, Wednesday September 11, 2019 6:00 pm

Planning & Zoning Board, Monday September 16, 2019 6:30 pm

Parks & Parkway Advisory Board, Thursday September 19, 2019 5:30 pm

Public Safety Advisory Board, Wednesday September 25, 2019 7:00 pm

Second Budget FY 2019-2020 Hearing Friday, September 20, 2019 6:30 pm  
Regular Commission Meeting, Tuesday October 1, 2019 7:00 pm

**16 Adjournment**

Mayor Truppman motioned to adjourn and Commissioner Wise seconded. Meeting adjourned at 11:00 pm.

---

Commission approved on November 05, 2019.

Attest:

---

Tracy Truppman, Mayor

---

Roseann Prado, Village Clerk



## *The Village of Biscayne Park*

640 NE 114th St., Biscayne Park, FL 33161

Telephone: 305 899 8000 Facsimile: 305 891 7241

**MINUTES  
SPECIAL COMMISSION MEETING  
Log Cabin - 640 NE 114th Street  
Biscayne Park, FL 33161  
Thursday, October 17, 2019 6:30 pm**

**1 Call to Order**

Mayor Truppman called the meeting to order at 6:30 pm

**2 Roll Call**

Mayor Truppman - present  
Vice Mayor Johnson-Sardella - absent  
Commissioner Samaria - present  
Commissioner Tudor - present  
Commissioner Wise - absent

Present from staff were:

Village Manager Krishan Manners  
Village Attorney Rebecca Rodriguez  
Chief of Police Luis Cabrera  
Village Clerk Roseann Prado

**3 Pledge of Allegiance**

**4 Public Comments**

*The following persons spoke on the record:*

Dan Keys  
MacDonald Kennedy

**5 Ordinance**

**5.a discussion on Ordinance regarding Special Magistrate**

AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AMENDING CHAPTERS 14 AND 15 OF THE LAND DEVELOPMENT CODE OF THE VILLAGE OF BISCAYNE PARK; AUTHORIZING SPECIAL MAGISTRATE POSITION FOR CODE ENFORCEMENT PURPOSES; PROVIDING FOR ORDINANCES IN CONFLICT, REPEALER, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

Commission came to a consensus to keep both: Code Board and Special Magistrate.  
Village Attorney was directed to adjust language at Ordinance.

**6 Adjourment**

Vice-Mayor Dan Samaria motioned to adjourn. Commissioner Tudor seconded.  
Meeting adjourned at 7:41 pm.

---

Commission approved on Regular Commission Meeting of November 05, 2019.

Attest:

\_\_\_\_\_  
Tracy Truppman, Mayor

\_\_\_\_\_  
Roseann Prado, Village Clerk



**MINUTES  
WORKSHOP  
RESIDENTS COMMUNICATION  
AND VILLAGE CODE  
Log Cabin - 640 NE 114th Street  
Biscayne Park, FL 33161  
Thursday, October 17, 2019 - 7:00 pm**

**1 Call to Order**

Vice-Mayor Samaria called the meeting to order at 7:51 pm.

**2 Roll Call**

Mayor Tracy Truppman - absent

Vice-Mayor Dan Samaria - present

Commissioner Jenny Johnson-Sardella - absent

Commissioner William Tudor - present

Commissioner Betsy Wise - absent

Present from staff were:

Village Manager Krishan Manners

Village Clerk Roseann Prado

**3 Pledge of Allegiance**

**4 Public Comments Related to Agenda Items**

The following persons spoke on the records:

MacDonald Kennedy

Dan Keys

Barbara Kuhl

David Raymond

**5 Information / Updates**

**5.a Discussion on Residents Communication**

**6 Adjournment**

Commissioner Tudor motioned to adjourn. Vice-Mayor Samaria seconded. Meeting adjourned at 8:37 pm.

---

Commission approved on November 05, 2019

Attest:

---

Tracy Truppman, Mayor

---

Roseann Prado, Village Clerk





## *The Village of Biscayne Park*

640 NE 114th St., Biscayne Park, FL 33161

Telephone: 305 899 8000 Facsimile: 305 891 7241

**MINUTES**  
**SPECIAL COMMISSION MEETING**  
**Log Cabin - 640 NE 114th Street**  
**Biscayne Park, FL 33161**  
**Thursday, October 24, 2019 6:30 pm**

**1 Call to Order**

Mayor Truppman called the meeting to order at 6:30 pm

**2 Roll Call**

Mayor Truppman - present  
Vice Mayor Johnson-Sardella - absent  
Commissioner Samaria - present  
Commissioner Tudor - present

Present from staff were:

Village Manager Krishan Manners  
Village Attorney Rebecca Rodriguez  
Village Clerk Roseann Prado  
Recordings: Cesar Hernandez

**3 Pledge of Allegiance**

**4 Public Comments**

*The following persons spoke on the record:*

MacDonald Kennedy  
Dan Keys  
Janey Anderson  
Barbara Kuhl  
Chuck Ross  
Gary Kuhl

**5 Ordinance**

**5.a Ordinance 2019-05 - Special Magistrate - First Reading**

AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AMENDING CHAPTERS 14 AND 15 OF THE LAND DEVELOPMENT CODE OF THE VILLAGE OF BISCAYNE PARK; AUTHORIZING SPECIAL MAGISTRATE POSITION FOR CODE ENFORCEMENT PURPOSES; PROVIDING FOR ORDINANCES IN CONFLICT, REPEALER, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

Public Hearing related to Ordinance 2019-05.

The following persons spoke on the record:

Janey Anderson

Rox Ross

Chuck Ross

Dan Keys

Barbara Kuhl

MacDonald Kennedy

Bob Anderson

Fred Jonas

Gary Kuhl

Commissioner Tudor motioned to approve Ordinance # 2019-05 on first reading with the amendments indicated by Commissioners to Village Attorney. Mayor Truppman seconded.

Commission voted as follows:

Mayor Truppman: Yes

Vice-Mayor Samaria: No

Commissioner Tudor: Yes

**Motion passed 2 - 1**

## **6 Resolutions**

### **6.a Resolution # 2019-26 - Special Election**

A RESOLUTION OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA; CALLING A SPECIAL ELECTION TO FILL VACANCY OF ONE COMMISSION SEAT; SCHEDULING SPECIAL ELECTION TO BE HELD ON TUESDAY, JANUARY 07, 2020; PROVIDING FOR NOTICE OF SPECIAL ELECTION; PROVIDING FOR CANDIDATE QUALIFYING; PROVIDING FOR SPECIAL ELECTION POLLING LOCATION: PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

Commissioner Tudor motioned to approve Resolution 2019-26. Mayor Truppman seconded. **Motion passed 3 - 0.**

## **6 Adjournment**

Vice-Mayor Samaria motioned to adjourn. Mayor Truppman seconded. Meeting adjourned at 8:47 pm.

---

Commission approved on Regular Commission Meeting of November 05, 2019.

Attest:

\_\_\_\_\_  
Tracy Truppman, Mayor

\_\_\_\_\_  
Roseann Prado, Village Clerk



**MINUTES  
WORKSHOP  
REVIEW OF BRANDING PROPOSAL  
Log Cabin - 640 NE 114th Street  
Thursday, October 24, 2019 - 7:30 pm**

**1 Call to Order**

Vice-Mayor Samaria called the meeting to order at 7:51 pm.

**2 Roll Call**

Mayor Tracy Truppman - present

Vice-Mayor Dan Samaria - present

Commissioner Jenny Johnson-Sardella - absent

Commissioner William Tudor - present

Present from staff were:

Village Manager Krishan Manners

Village Clerk Roseann Prado

Recordings: Cesar Hernandez

**3 Pledge of Allegiance**

**4 Public Comments Related to Agenda Items**

The following persons spoke on the records:

Dan Keys

Janey Anderson

Chuck Ross

Linda Dillon

Jared Susi

**5 Information / Updates**

**5.a**

Review of Branding Proposal - Village Manager explained the results of the survey.

**6 Adjournment**

Vice-Mayor Samaria motioned to adjourn. Commissioner Tudor seconded. Meeting adjourned at 9:36 pm.

---

Commission approved on November 05, 2019

Attest:

---

Tracy Truppman, Mayor

---

Roseann Prado, Village Clerk



**VILLAGE OF BISCAYNE PARK**  
**Village Commission Agenda Report**

**Item # 8.b**

**REGULAR MEETING**

---

**TO:** Honorable Mayor & Members of the  
Biscayne Park Village Commission

**FROM:** Krishan Manners, Village Manager

**DATE:** November 5, 2019

**TITLE:** Memorandum of Agreement with N. Miami for Median on 121<sup>st</sup> Street

**Recommendation**

Staff recommends the Village enter into this MOA with the City of N. Miami to divide the responsibilities for maintaining the median on 121<sup>st</sup> Street.

**Background**

The median on 121<sup>st</sup> Street from Griffing Blvd. to 10<sup>th</sup> Avenue is shared between N. Miami on the north side and Biscayne Park on the south side. This Landscape and Maintenance agreement defines the roles expected from each municipality to maintain this median. This provides a clear delineation of which municipality is responsible for maintaining, landscaping, tree trimming, etc.

**Resource Impact**

As the Village's role in this is similar to the service we already provide on this median, there is no expected budget increase.

---

Prepared by: Krishan Manners

1  
2  
3 **RESOLUTION NO. 2019-24**  
4

5 **A RESOLUTION OF THE VILLAGE COMMISSION OF THE**  
6 **VILLAGE OF BISCAYNE PARK, FLORIDA; APPROVING THE**  
7 **LANDSCAPE AND MAINTENANCE MEMORANDUM OF**  
8 **AGREEMENT (MMOA) BETWEEN THE VILLAGE OF**  
9 **BISCAYNE PARK AND THE CITY OF NORTH MIAMI FOR**  
10 **THE MEDIANS LOCATED ALONG NORTHEAST 121 STREET**  
11 **FROM GRIFFING BOULEVARD TO 10<sup>th</sup> AVENUE; PROVIDING**  
12 **FOR AN EFFECTIVE DATE.**  
13

14 **WHEREAS**, the Village of Biscayne Park, Florida (the "Village") and the City of  
15 North Miami ("North Miami") have mutual jurisdiction over certain medians located along  
16 Northeast 121 Street from Griffing Boulevard to 10<sup>th</sup> Avenue (the "Mutual Medians"); and

17 **WHEREAS**, the Village and North Miami are both desirous to coordinate their  
18 respective maintenance efforts to the Mutual Medians, including beautification improvements  
19 such as landscaping and sod replacement; and

20 **WHEREAS**, the Village and North Miami have reached a proposed memorandum of  
21 maintenance agreement (the "MMOA") regarding maintenance of the Mutual Medians; and

22 **WHEREAS**, the Village Commission has determined it is in the best interests of  
23 Village residents to enter into the MMOA with North Miami to ensure the Mutual Medians are  
24 properly maintained;

25 **NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COMMISSION**  
26 **OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, that:**

27 **Section 1.** The Village Commission approves the Landscape and Maintenance  
28 Memorandum of Agreement with the City of North Miami for the medians located along  
29 Northeast 121 Street from Griffing Boulevard to 10<sup>th</sup> Avenue, in form and substance similar to  
30 that attached hereto as Exhibit 'A.'



**LANDSCAPE AND MAINTENANCE  
MEMORANDUM OF AGREEMENT  
WITH THE  
VILLAGE OF BISCAYNE PARK**

This **AGREEMENT**, entered into on \_\_\_\_\_, 2019, by and between the **CITY OF NORTH MIAMI**, a municipal corporation of the State of Florida, hereinafter called the **CITY**, and the **VILLAGE OF BISCAYNE PARK**, a Florida municipal corporation, having its principal office at 640 NE 114th Street, Biscayne Park, FL 33161, hereinafter called the **VILLAGE**, and collectively referred to as the **PARTIES**.

**RECITALS:**

- A. The **CITY** and the **VILLAGE** have split jurisdiction over the medians that are located on N.E. 121 Street from Griffing Blvd. to 10<sup>th</sup> Avenue; and
- B. The **VILLAGE** would like to perform scheduled maintenance to the medians, including beautification improvements such as landscaping and sod replacement; and
- C. The **PARTIES** to this **AGREEMENT** mutually recognize the need for entering into an agreement designating and setting forth the responsibilities of each party with regards to the maintenance of the medians; and
- D. The **CITY** desires to enter into this **AGREEMENT** and authorizes its officers to do so.

**NOW, THEREFORE**, for and in consideration of the mutual benefits contained herein and other good and valuable consideration, the parties covenant and agree as follows:

**1. RECITALS**

The recitals in this **AGREEMENT** are true and correct, and are incorporated herein by reference and made a part hereof.

**2. VILLAGE RESPONSIBILITIES**

The **PARTIES** agree that by executing this **AGREEMENT** the **VILLAGE** shall be responsible for maintaining the landscaping that it installs, in accordance with all applicable **CITY** guidelines. The **VILLAGE**'s maintenance obligations shall include but not be limited to:

- a. Mowing, cutting, weed eating, blowing and/or trimming and edging the grass, turf and hedges for site clearance.
- b. Pruning all plant materials, which include shrubs and ground covers and parts thereof.

c. Removing and properly disposing of dead, diseased or otherwise deteriorated plants and fallen limbs in their entirety, and replacing those that fall below the **CITY**'s standards. All plantings shall be Florida Friendly/Native plants which have been approved by the **CITY**.

d. Mulching all plant beds and tree rings.

e. Removing and disposing of all undesirable vegetation including but not limited to weeding of plant beds and removal of invasive exotic plant materials.

f. Taking all necessary maintenance measures necessary to ensure all the plant materials remain in a healthy and vigorous growing condition.

g. Installation of wood pole to deter traffic cutting over medians.

### 3. **CITY'S MAINTENANCE RESPONSIBILITIES**

The **CITY** shall maintain all trees in the medians. The **CITY'S** maintenance obligations shall include but not be limited to:

- a) Tree removal.
- b) Removal of tree stumps.
- c) Tree trimming.
- d) Planting of new trees upon approval of **VILLAGE** and **CITY**.

### 4. **MAINTENANCE DEFICIENCIES**

If at any time it shall come to the attention of the **CITY** that the **VILLAGE's** responsibilities as established herein are not being properly accomplished pursuant to the terms of this **AGREEMENT**, the **CITY** shall issue a written notice, to the **VILLAGE MANAGER**, to notify the **VILLAGE** of the maintenance deficiencies. From the date of receipt of the notice, the **VILLAGE** shall have a period of thirty (30) calendar days, within which to correct the cited deficiency or deficiencies. Receipt is determined in accordance with Section 5 of this **AGREEMENT**.

If said deficiencies are not corrected within this time period, the **CITY** may, at its option, proceed as follows:

- a) Perform the required maintenance activities and invoice the **VILLAGE** for expenses incurred; or

b) Terminate this Agreement in accordance with Section 7.

**5. NOTICES**

All notices, requests, demands, consents, approvals, and other communication which are required to be served or given hereunder, shall be in writing and shall be sent by certified U.S. mail, return receipt requested, postage prepaid, addressed to the party to receive such notices as follows:

**To the CITY:** City of North Miami  
776 NE 125<sup>th</sup> Street  
North Miami, Florida 33161  
Attention: City Manager

**With a Copy to:** City of North Miami  
776 NE 125<sup>th</sup> Street  
North Miami, Florida 33161  
Attention: City Attorney

**To the VILLAGE:** Village of Biscayne Park  
600 NE 114<sup>th</sup> Street  
Biscayne Park, FL 33161  
Attention: Village Manager

Notices shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided.

**6. REMOVAL, RELOCATION OR ADJUSTMENT.** The Parties agree that the landscaping addressed by this **AGREEMENT** may be removed, relocated or adjusted at any time in the future, by t the **CITY'S**, with the written approval of the **VILLAGE**, which approval will not be unreasonably withheld. In the event that the **CITY** relocates or adjusts the landscaping pursuant to the Paragraph 6 the **VILLAGE'S** maintenance responsibilities will survive the relocation or adjustment, so long as the materials remain within the medians.

**7. TERMINATION**

This **AGREEMENT** is subject to termination under any one of the following conditions:

- a) By the **CITY**, if the **VILLAGE** fails to perform its duties under Section 3 of this **AGREEMENT**, following the thirty (30) days written notice, as specified in Section 4 of this **AGREEMENT**.
- b) By either parties, upon thirty (30) days advance notice.

## 8. TERMS

- a) The effective date of this **AGREEMENT** shall commence upon execution by the **PARTIES**. This **AGREEMENT** shall continue in perpetuity or until termination as set forth in Section 7.
- b) This writing embodies the entire agreement and understanding between the parties hereto and there are no other agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.
- c) This **AGREEMENT** shall not be transferred or assigned, in whole or in part, without the prior written consent of **either PARTY**.
- d) This **AGREEMENT** shall be governed by and constructed in accordance with the laws of the State of Florida. Any provisions of this **AGREEMENT** found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions of the **AGREEMENT**.
- e) Venue for any and all actions arising out of or in connection to the interpretation, validity, performance or breach of this **AGREEMENT** shall lie exclusively in a state court of proper jurisdiction in Miami-Dade County, Florida.
- f) A modification or waiver of any of the provisions of this **AGREEMENT** shall be effective only if made in writing and executed with the same formality as this agreement.
- g) The section headings contained in this **AGREEMENT** are for reference purposes only and shall not affect the meaning or interpretation hereof.
- h) No term or provision of this **AGREEMENT** shall be interpreted for or against either Party because the Party or its legal representative drafted the provision.
- i) The **PARTIES** are subject to the provisions of Section 768.28, Florida Statutes, as may be amended from time to time. Nothing in this **AGREEMENT** shall be deemed or otherwise interpreted as waiving sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

## 9. INDEMNIFICATION

Subject to Section 768.28, Florida Statutes, , the **VILLAGE** shall promptly indemnify, defend, save and hold harmless the **CITY**, its officers, and employees from any and all losses, expenses, fines, fees, taxes, assessments, penalties, costs, damages, judgments, claims, demands, liabilities, attorney's fees, (including regulatory and appellate fees), and suits of any nature or kind whatsoever caused by, arising out of, or related to the

**VILLAGE'S** exercise or attempted exercise of its responsibilities as set out in this **AGREEMENT**.

Subject to Section 768.28, Florida Statutes, , the **City** shall promptly indemnify, defend, save and hold harmless the **VILLAGE**, its officers, and employees from any and all losses, expenses, fines, fees, taxes, assessments, penalties, costs, damages, judgments, claims, demands, liabilities, attorney's fees, (including regulatory and appellate fees), and suits of any nature or kind whatsoever caused by, arising out of, or related to the **CITY'S** exercise or attempted exercise of its responsibilities as set out in this **AGREEMENT**.

Each PARTY'S obligation to indemnify, defend and pay for the defense of the other, or at each PARTY'S option, to participate and associate with the other in the defense and trial of any claim and any related settlement negotiations, shall be triggered immediately upon the **receipt** of the **notice** of claim for indemnification. The notice of claim for indemnification shall be deemed received if the PARTY sends the notice in accordance with the formal notice mailing requirements set forth in Section 5 of this **AGREEMENT**. **A PARTY'S failure** to notify the **other** of a claim shall not release the **obligation** of the above duty to defend and indemnify.

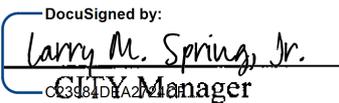
The indemnification provisions of this section shall survive termination or expiration of this **AGREEMENT**, but only with respect to those claims that arose from acts or circumstances which occurred prior to termination or expiration of this **AGREEMENT**.

Nothing in this Paragraph 9 shall be deemed or otherwise interpreted as waiving sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

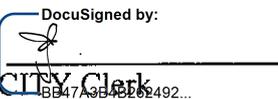
**IN WITNESS WHEREOF**, the parties hereto have caused these presents to be executed the day and year first above written.

**CITY OF NORTH MIAMI**

**VILLAGE OF BISCAYNE PARK:**

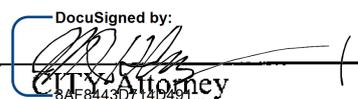
BY:    
Larry M. Springs, Jr.   
CITY Manager

BY: \_\_\_\_\_   
VILLAGE Manager

ATTEST:    
CITY Clerk

ATTEST: \_\_\_\_\_   
VILLAGE Clerk

**LEGAL REVIEW:**

BY:    
CITY Attorney

BY: \_\_\_\_\_   
VILLAGE Attorney

***EXHIBIT 'A'***

Below are the limits of the landscape and signage to be maintained under this **AGREEMENT**.

**Agreement Limits: Medians located on NE 121 Street, From Griffing Blvd. to NE 10<sup>th</sup> Avenue**

**County: Miami-Dade**



**VILLAGE OF BISCAYNE PARK**  
**Village Commission Agenda Report**  
**REGULAR MEETING**

**Item # 8.c**

---

**TO:** Honorable Mayor & Members of the  
Biscayne Park Village Commission

**FROM:** Krishan Manners, Village Manager

**DATE:** November 5, 2019

**TITLE:** Resolution No. 2019-28 – Contract for Judo Training/Instruction at Ed  
Burke Recreation Center

---

**Recommendation**

Staff recommends the Village enters into contract with USA Judo Coach Josue Deprez to provide professional services in the form of judo instruction at the Ed Burke Recreation Center for the benefit of Village residents.

**Background**

In an effort to create more programming at the Ed Burke Recreation Center, the Village has contacted to USA Judo Coach Josue Deprez (“Coach Deprez”). Coach Deprez is a decorated Olympian. The Parks and Recreation Manager met with Coach Deprez, who expressed an interest in providing a Judo Program (as well as a women’s self-defense class) at the Ed Burke Recreation Center.

**Legal Note**

As this would be a contract to provide professional services – providing judo instruction to residents – it is exempted from competitive bidding requirements pursuant to Section 2-141 of the Village’s Code of Ordinances.

**Resource Impact**

The Judo Program will provide revenue to the Village. Staff recommends that for the first year of the program the revenue split be set at 80%(Instructor) and 20%(Village). This request is based on the anticipated start-up costs associated with the first year of the program (equipment, mats, etc.).

**Attachments**

- Resolution No. 2019-28
  - Proposal and Credentials
  - Section 2-141 of the Village Code
- 

Prepared by: Krishan Manners

1  
2  
3 **RESOLUTION NO. 2019-28**  
4

5 **A RESOLUTION OF THE VILLAGE COMMISSION OF THE**  
6 **VILLAGE OF BISCAYNE PARK, FLORIDA, AUTHORIZING**  
7 **THE VILLAGE MANAGER TO NEGOTIATE A PROFESSIONAL**  
8 **SERVICES CONTRACT WITH USA JUDO INSTRUCTOR**  
9 **JOSUE DEPREZ TO PROVIDE CERTAIN JUDO AND SELF**  
10 **DEFENSE TRAINING SERVICES TO VILLAGE RESIDENTS IN**  
11 **THE ED BURKE RECREATION CENTER; PROVIDING FOR AN**  
12 **EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.**  
13

14 **WHEREAS**, the Village of Biscayne Park, Florida (the "Village") is desirous to  
15 provide various courses to its residents at the Village's Ed Burke Recreation Center (the  
16 "Recreation Center");

17 **WHEREAS**, the Parks and Recreation Director has proposed offering certain martial  
18 arts and self-defense courses to Village residents at the Recreation Center;

19 **WHEREAS**, the Village Manager has presented the Village Commission with a  
20 proposed training instructor, Josue Deprez, to provide certain judo and self-defense training  
21 professional services to Village residents in the Recreation Center;

22 **WHEREAS**, pursuant to Section 2-141 of the Village's Code of Ordinances,  
23 professional services are exempted from competitive solicitation requirements;

24 **WHEREAS**, the Village Commission finds it to be in the best interest and welfare of  
25 the Village and its residents to offer these courses to the residents at the Recreation Center;

26 **NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COMMISSION**  
27 **OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, that:**

28 **Section 1.** The foregoing "Whereas" clauses are hereby ratified and confirmed as being  
29 true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

30 **Section 2.** The Village Commission approves instructor Josue Deprez to provide judo  
31 and self-defense training professional services.



**USA Judo Coach, Josue Deprez**

**Proposal for Judo Program incorporating emotional health.  
Prepared by USA Judo Coach Josue Deprez**

## **USA Judo Coach, Josue Deprez**

I started Judo as a young boy (8 years old) while living in Haiti. I was inspired by Holman Jean Alix, a former national champion living just couple blocks from me. Throughout my career, I won 8 national titles, 5 Panamanian titles, and became the first Haitian to ever go to the 3rd round at the world championship Rio 2013, and then returned to Rio and participated in 2016 Olympic Game. I went on to win the 2015 Pan American Championship in Ecuador, World Championship in Kazakhstan, Gold in the 2016 Memphis National, USA Tournament, and the 2016 Pan American Championship in Havana, Cuba. Currently I coach judo at the Spa of Quayside, winners training center, and I'm the USA Judo National Coach.

In this proposal I plan to show how my Judo program, when incorporating emotional health, can benefit the children of North Miami in the Biscayne Park Recreation Center. Judo is a perfect choice for children. Though it is a martial art, Judo emphasizes these two principles:

- Maximum efficiency with minimum effort
- Mutual welfare benefits for all

### **What is Judo?**

In 1882, Dr. Jigoro Kano (The Father of Judo) made a comprehensive study of ancient self-defense forms. Judo is a sport that demands both physical prowess and mental discipline. Judo is simple and basic, and anyone can learn. Judo in particular, develops discipline, manners, punctuality, strength, stamina, tenacity, toughness, and confidence, which are all character traits that are essential to achievement for overall emotional health and balance.

### **What students will learn**

#### ➤ **Self-Awareness**

Seeing their child excited about learning is something all parents strive to achieve. Judo is mentally and physically stimulating in a productive learning environment; by learning to align their mind with their body, kids become very aware of themselves and others.

## USA Judo Coach, Josue Deprez

- **Flexibility and Balance** By learning the techniques and movements involved in Judo children are twisted, turned, contorted and as a result increase their flexibility. These exercises also help kids maintain balanced posture even if they do stumble.

- **Concentration and Focus**

When participating in a Judo class a student needs to remain focused so as to not injure themselves or their classmates. Incorporating emotion regulation to a Judo program is essential in developing a whole person approach to helping students improve on academic performance, self-esteem, confidence, self-reliability, focus mental toughness and clarity, physical and emotional health. This will improve their athleticism, personal development, academic performance, and success goals.

- **Ethical Competition**

The process involves bowing to your opponent and the referee; these are acknowledgements of your opponent's willingness to engage you in a bout and the referee's position in control of the fight. The compulsory bowing and handshake upon completion of the fight means sportsmanship is paramount.

- **Self Defense**

Judo does not teach weapons fighting or even striking (punches and kicks). However, they learn to grapple and control an opponent to defend long enough for a chance to run away unscathed. The confidence that Judo gives a child also helps to make them bully-proof.

- **Technique**

In my program kids will learn an array of techniques used in Judo. Not only will they learn and master each technique but will be educated on the meaning and rules of each move.

- **Exercise**

Judo can provide a variety of forms of exercise, a long low intensity workout providing aerobic benefits, short intense workouts building anaerobic benefits. Physical activity as you know helps to release endorphins, powerful chemicals that lift your mood and increase energy levels. That increased energy level has an impact on mental and emotional health.

## **USA Judo Coach, Josue Deprez**

### **Action Plan:**

My motto is “help a child be great!!!!” The program I’m proposing will assist each child with his or her individual needs, taking the students step by step through the art, and providing the tools to succeed, all while incorporating emotional health. Each class will start with a warm up followed by a lecture on two or more techniques, followed by practice. My goal is not to push students from one belt to another, but to help them achieve the skills and confidence to earn their rank while helping them to understand how to accept, process, and release emotional stress, which is imperative for their academic, personal growth and success. We are facing a crisis with our youth to include but not limited to bullying, low self-esteem, increased suicide rates, poor academic performance, higher than normal high school dropout rates, negative coping mechanisms, suicides and gun violence deaths. As a certified USA Judo coach who participated in several tournaments across the world, I will also prepare and train each qualifying student to participate in tournaments.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

06/18/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Hiscox Inc. 520 Madison Avenue 32nd Floor New York, NY 10022	<b>CONTACT NAME:</b> PHONE (A/C No. Ext): (888) 202-3007      FAX (A/C, No): E-MAIL ADDRESS: contact@hiscox.com	
	<b>INSURER(S) AFFORDING COVERAGE</b> <b>NAIC #</b> INSURER A: Hiscox Insurance Company Inc      10200 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	
<b>INSURED</b> Enterprise Deprez Judo & Fitness Inc. 12345 E 11th Ct Miami FL 33161		

**COVERAGES**      **CERTIFICATE NUMBER:**      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			UDC-2318396-CGL-19	08/07/2019	08/07/2020	EACH OCCURRENCE \$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
							MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ S/T Gen. Agg.
							\$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$						EACH OCCURRENCE \$
							AGGREGATE \$
							\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE    OTH-ER
							E.L. EACH ACCIDENT \$
							E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

<b>CERTIFICATE HOLDER</b>	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

© 1988-2014 ACORD CORPORATION. All rights reserved.



**NSCA CEU**  
**APPROVED**

*Josue Deprez*

CERTIFICATE OF COMPLETION FOR:

**BOMMARITO UNIVERSITY  
M.A.S.S CERTIFICATION**

NSCA PROVIDER # L1321  
NASM PROVIDER # 1,084

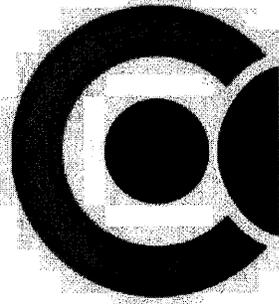
**JUNE 10<sup>TH</sup>, 2019**

*Pete Bommarito*

---

PETE BOMMARITO, PRESIDENT

# CERTIFICATE OF COMPLETION



## CDC HEADS UP

SAFE BRAIN. STRONGER FUTURE.

Awarded January 2019 to

**Josue Deprez**

Name

In recognition of completing the HEADS UP Concussion  
Training for Youth Sports Coaches



CDC



# USA Judo

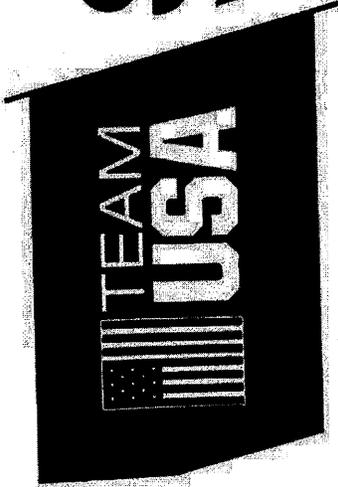
## 2019 Certificate of Membership

This certifies that

**Deprez Judo Club**

is a club member in good standing with

USA Judo and is subject to the rules  
and regulations of USA Judo



# SAFESPORT

Where your game plan starts

Josue Deprez

has successfully completed

SafeSport Refresher Training

On: 11/5/2017

Completion Code: USOC-SSR-2014-1-567818





**VILLAGE OF BISCAYNE PARK**  
**Village Commission Agenda Report**  
**REGULAR MEETING**

**Item # 9.a**

---

**TO:** Honorable Mayor & Members of the  
Biscayne Park Village Commission

**FROM:** Krishan Manners, Village Manager

**DATE:** November 5, 2019

**TITLE:** Special Magistrate

**Recommendation**

Staff recommends the Village engage Special Magistrate to hear Code Cases.

**Background**

Pursuant to the Commission's comments at the October 24, 2019 Special Commission Meeting, attached is an Ordinance for second reading. This ordinance amends the Village's current Land Development Code to allow for a Special Magistrate to hear Code cases, as well as for a Code Board to continue to be utilized for certain cases.

**Resource Impact**

The cost of a Special Magistrate is approximately \$300 per meeting. Because the number of cases sent to the Special Magistrate will vary, I recommend we budget \$6000 for the FY19/20. In addition, to maintain a Code Board, an attorney will need to be hired to attend those meetings. An additional \$5000 should be budgeted for this added expense, based on an estimate of 20 hours at \$250/hr.

---

Prepared by: Krishan Manners

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15

**ORDINANCE NO. 2019-05**

**AN ORDINANCE OF THE VILLAGE COMMISSION OF  
THE VILLAGE OF BISCAYNE PARK, FLORIDA,  
AMENDING CHAPTERS 14 AND 15 OF THE LAND  
DEVELOPMENT CODE OF THE VILLAGE OF  
BISCAYNE PARK; AUTHORIZING SPECIAL  
MAGISTRATE POSITION FOR CERTAIN CODE  
ENFORCEMENT PROCEEDINGS; PROVIDING FOR  
ORDINANCES IN CONFLICT, REPEALER,  
CODIFICATION, SEVERABILITY, AND AN EFFECTIVE  
DATE.**

16           **WHEREAS**, pursuant to Section 162.03(2), Florida Statutes, a charter municipality may,  
17 by ordinance, adopt an alternate code enforcement system that gives code enforcement boards or  
18 special magistrates designated by the local governing body, or both, the authority to hold  
19 hearings and assess fines against violators of the respective county or municipal codes and  
20 ordinances;

21           **WHEREAS**, pursuant to Section 162.03(2), Florida Statutes, a special magistrate shall  
22 have the same status as a code enforcement board;

23           **WHEREAS**, Chapter 14 of the Village’s Land Development Code created a code  
24 compliance board to preside over the Village’s code enforcement proceedings;

25           **WHEREAS**, Chapter 15 of the Village’s Land Development Code provides enforcement  
26 guidelines for code compliance issues;

27           **WHEREAS**, the Village Commission is desirous to also utilize a special magistrate for  
28 certain code enforcement proceedings in the Village;

29           **WHEREAS**, on September 10, 2019, the Village Manager recommended the Village  
engage a special magistrate to preside over Village code enforcement proceedings;

1           **WHEREAS**, on October 1, 2019, the Village Commission had a preliminary discussion  
2 during its regular commission meeting about potentially adding a special magistrate authority for  
3 certain code enforcement proceedings;

4           **WHEREAS**, on October 17, 2019, the Village Commission held a special commission  
5 meeting to receive resident comments regarding, and discuss the potential for codifying,  
6 amendments to the Village’s Land Development Code to provide for a special magistrate in  
7 certain code enforcement proceedings;

8           **WHEREAS**, on October 24, 2019, the Village Commission held a special commission  
9 meeting to have a public hearing on, and first reading of, the proposed ordinance;

10           **WHEREAS**, on October 24, 2019, the proposed ordinance passed on its first reading;

11           **WHEREAS**, on October 25, 2019, the Village advertised the second reading and public  
12 hearing date for the proposed enactment of the ordinance in the Daily Business Review (ad. no.  
13 0000433955-01) in compliance with Section 166.041(3)(a), Florida Statutes;

14           **NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COMMISSION OF**  
15 **THE VILLAGE OF BISCAYNE PARK, FLORIDA, AS FOLLOWS:**

16           **Section 1.**    **Ratification.**    The foregoing “Whereas” clauses are hereby ratified and  
17 confirmed as being true and correct and are hereby made a specific part of this Ordinance upon  
18 adoption hereof.

19           **Section 2.**    **Land Development Code Amended.**    Chapters 14 and 15 of the Land  
20 Development Code of the Village of Biscayne Park, Florida shall be amended to read as follows:

21           CHAPTER 14. – SPECIAL MAGISTRATE AND CODE COMPLIANCE  
22           BOARD

23                   14.1. – Special magistrate and code compliance board—Generally.  
24  
25

1           14.1.1 Purpose. This chapter sets forth the procedures of governing the  
2 special magistrate and the code compliance board. When not expressly provided  
3 for in this chapter, article III, section 2-30 of the Biscayne Park Code shall apply.  
4

5           14.1.2 Intent. It is the intent of the village to provide an equitable,  
6 expeditious, effective, and inexpensive method of enforcing the codes and  
7 ordinances in force in the village by granting to the special magistrate and the  
8 code compliance board the authority to impose administrative fines and other  
9 non-criminal penalties for violation(s) of said codes and ordinances. Any alleged  
10 violation of the Code may also be enforced by the Village in any court of  
11 competent jurisdiction.  
12

13           14.1.3 Composition.

14           (a) Special magistrates.

15  
16           (1) Appointment. Appointments of special magistrates shall be  
17 made by the Village Manager or his or her designee on the basis of  
18 experience. Such appointments shall be submitted to the Village  
19 Clerk for ratification by the Village Commission. The hiring of a  
20 special magistrate must be ratified by a simple majority vote of the  
21 Village Commission to become final.  
22

23  
24           (2) Authority. Special magistrates shall be authorized to hear  
25 and decide cases involving code violations in the same manner as  
26 the code compliance board.  
27

28           (3) Qualifications. The special magistrate must be a licensed  
29 attorney who is a member in good standing with the Florida Bar,  
30 who possesses an outstanding reputation for civic pride, integrity,  
31 fairness, objectivity, responsibility, and the appropriate legal  
32 experience or background. A special magistrate must maintain a  
33 professional liability insurance policy with a policy limit deemed  
34 acceptable to the Village Manager. A copy of the policy must be  
35 presented to the Village Commission for review prior to voting on  
36 ratifying the hiring of a special magistrate.  
37

38           (4) Term of Appointment. Appointments shall be made for a  
39 term of two years. Any special magistrate may be reappointed at  
40 the discretion of the city manager, subject to ratification by the city  
41 commission. There shall be no limit on the number of  
42 reappointments of any individual hearing officer/special master. A  
43 determination as to removal or reappointment must be made for  
44 each hearing officer/special master at the end of each of his or her  
45 two-year term. The city manager shall have authority to remove  
46 hearing officers/special masters with or without cause.

1                   Appointments to fill any vacancy shall be for the remainder of the  
2                   unexpired term

3  
4                   (5) Removal. The Village Manager may remove a special  
5                   magistrate at any time.

6  
7                   (b) Code compliance board.

8  
9                   (1) Composition. The five-member board shall be appointed  
10                   by the village commission.

11  
12                   (2) Qualifications; exceptions. Members of the code  
13                   compliance board shall be property owners and residents of  
14                   the Village of Biscayne Park. Residents who are not  
15                   property owners in the Village of Biscayne Park may be  
16                   appointed by the village commission by at least a four-  
17                   fifths super majority vote. Appointments shall be made on  
18                   the basis of experience or interest and, when possible,  
19                   include the following individuals: an architect, an attorney  
20                   a business person, an engineer, a general contractor, a  
21                   subcontractor and a licensed real estate person.

22  
23                   14.1.4 (3) Terms of office. The initial appointments to the code  
24                   compliance board and the alternate members shall be as  
25                   follows:

26  
27                   (1a) One (1) member appointed for a term of one (1)  
28                   year.

29  
30                   (2b) Two (2) members appointed for a term of two (2)  
31                   years.

32  
33                   (3c) Two (2) members appointed for a term of three (3)  
34                   years.

35  
36                   Thereafter, all appointments shall be made for a term of three (3) years and shall  
37                   take effect on May 1 of the year the appointment is made. A member may be  
38                   reappointed upon approval of the village commission. Appointments to fill any  
39                   vacancy on the code compliance board shall be for the remainder of the unexpired  
40                   term of office. For an excused absence, a board or committee member must  
41                   advise the village clerk prior to the meeting of the fact that they will be absent and  
42                   provide a reason for that absence. The board or committee may vote to excuse the  
43                   requested absence at the same meeting the board or committee member is absent.  
44                   The absence, and whether or not the absence is excused or unexcused, is to be  
45                   reflected in the minutes.

1 The members shall serve in accordance with the village Charter and may be  
2 suspended and removed for cause as provided in the village code for removal of  
3 members of village boards.

4  
5 14.1.4 Jurisdiction of special magistrate and code compliance board.

6  
7 (a) The special magistrate shall preside over code enforcement  
8 proceedings involving:

9  
10 (1) Irreparable or irreversible violations. For purposes of this  
11 section, “irreparable” or “reversible” violations are those  
12 that are incapable of correction, repair or return to an  
13 original condition.

14  
15 (2) Continuing violations. For purposes of this section,  
16 “continuing” violations are those violations which remain  
17 uncorrected beyond the prescribed time period for  
18 correction contained in the civil violation notice. For each  
19 day of continued violation after the time period for  
20 correction has run, an additional penalty in the same  
21 amount as for the original violation shall be added.

22  
23 (3) Repeat violations. For purposes of this section, “repeat”  
24 violation means a violation of a provision of a code or  
25 ordinance by a person who has been previously found  
26 through a code enforcement board or any other quasi-  
27 judicial or judicial process, to have violated or who has  
28 admitted violating the same provision within 5 years prior  
29 to the violation, notwithstanding the violations occur at  
30 different locations. For the purposes of this definition, a  
31 plea of "No Contest" or "Nolo Contendere" shall be deemed  
32 an admission of a violation.

33  
34 (4) Uncorrectable violation. For purposes of this section, an  
35 "uncorrectable" violation is a violation which cannot be  
36 remedied after the violation has been committed because  
37 the violation constitutes a single prohibited act rather than  
38 an ongoing condition or circumstance. Each reoccurrence  
39 of an uncorrectable violation shall constitute a separate  
40 violation and shall subject the violator to an additional  
41 penalty in the same amount as that prescribed for the  
42 original violation. If, however, a violator has been once  
43 found guilty of an uncorrectable violation, and causes the  
44 same uncorrectable violation to occur a second time, each  
45 reoccurrence of the uncorrectable violation by such violator  
46 shall constitute a "repeat violation."

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46

- (5) Assessment of fines including costs relating to the prosecution of cases before the special magistrate and/or code compliance board in those cases where the village prevails;
- (6) Assessment of costs;
- (7) Assessment or mitigation of liens upon real property;
- (8) Fine reduction hearings brought at the request of the violator;
- (9) Amnesty hearings. For purposes of this section, “amnesty hearings” shall mean a presentation by the village manager or finance director requesting special magistrate ratification of proposed settlement terms to resolve an outstanding and unpaid fine or lien on the basis that said potential settlement would be in the best interests of the village and its residents;
- (10) Any proceedings involving real property presently owned by a governmental, quasi-governmental, or corporate entity;
- (11) Any proceeding wherein the respondent will be represented by legal counsel;
- (12) Any proceeding involving a violation which carries the potential to impose an initial fine equal to or greater than five thousand dollars and zero cents (\$5,000.00).

(b) The code compliance board shall preside over the following types of code enforcement hearings:

- (1) Hearings involving a first notice of violation, administrative citation, and any other preliminary or routine code compliance matters not specifically delegated to the special magistrate;
- (2) Requests for extensions of time to correct violation(s);
- (3) Any code proceedings not specifically delegated to the special magistrate’s jurisdiction shall be within the jurisdiction of the code compliance board.

1                   (4) In the event the code compliance board does not meet to  
2 hold a monthly hearing, the special magistrate shall preside  
3 over all code proceedings that month. The village clerk  
4 shall promptly notify both the respondent and the code  
5 enforcement officer in writing of any reassignments from  
6 the code compliance board's hearing docket to the special  
7 magistrate's hearing docket.

8  
9                   14.1.5 Procedures for code compliance board.

- 10  
11                   (a) ~~Chairman~~ Chairperson. The members of the code compliance  
12 board shall elect a ~~chairman~~ chairperson from among its members.  
13  
14                   (b) Quorum. The presence of three (3) members shall constitute a  
15 quorum of the code compliance board.  
16  
17                   (c) Expenses. Members shall serve without compensation, but may be  
18 reimbursed for such travel, mileage and per diem expenses as may  
19 be authorized by the village commission.  
20

21                   14.1.6 Counsel. The village attorney shall either be counsel to the code  
22 compliance board or shall represent the village by presenting cases before the  
23 board, but in no case shall the village attorney serve in both capacities.  
24

25                   14.1.7 Compliance procedure.

- 26  
27                   (a) It shall be the duty of the code compliance officer to initiate  
28 enforcement proceedings of the various codes; provided, however,  
29 no member of the code compliance board shall have the power to  
30 initiate such enforcement proceedings.  
31  
32                   (b) Except as provided in subsections (c), (d) and (f), if a violation of  
33 the codes is found, the code compliance officer shall notify the  
34 violator and give the violator a reasonable time to correct the  
35 violation. Should the violation continue beyond the time specified  
36 for correction, the code compliance officer shall notify the special  
37 magistrate or code compliance board of the charges and request a  
38 hearing pursuant to procedure in section 14.1.8. Notice shall be  
39 provided pursuant to section 14.1.13.  
40  
41                   (c) If the violation is corrected and then recurs or if the violation is not  
42 corrected by the time specified for correction by the code  
43 compliance officer, the case may be presented to the special  
44 magistrate or code compliance board even if the violation has been  
45 corrected prior to the ~~board~~ hearing, and the notice shall so state. If  
46 a repeat violation is found, the code compliance officer shall notify

1 the violator but is not required to give violator a reasonable time to  
2 correct the violation. The code compliance officer, upon notifying  
3 the violator of a repeat violation, shall notify the special magistrate  
4 or code compliance board and request a hearing. The special  
5 magistrate or code compliance board shall schedule a hearing and  
6 shall provide notice pursuant to section 14.1.12. The case may be  
7 presented to the special magistrate or code compliance board even  
8 if the repeat violation has been corrected prior to the ~~board~~ hearing,  
9 and the notice shall so state. "Repeat violation" means a violation  
10 of a provision of a code or ordinance by a person who has been  
11 previously found, through a special magistrate, code compliance  
12 board, or other quasi-judicial or judicial process, to have violated  
13 or has admitted violating the same provision within five (5) years  
14 prior to the violation.

15  
16 (d) If the code compliance officer has reason to believe a violation  
17 presents a serious threat to the public health, safety and welfare,  
18 the code compliance officer may proceed directly to the procedure  
19 in subsection 14.1.7(b) without notifying the violator.

20  
21 (e) If the owner of the property which is subject to an enforcement  
22 proceeding before a special magistrate or code compliance board,  
23 or if the court, transfers ownership of such property between the  
24 time the initial pleading was served and the time of the hearing,  
25 such owner shall:

26  
27 (1) Disclose, in writing, the existence and the nature of the  
28 proceeding to the prospective transferee.

29  
30 (2) Deliver to the prospective transferee a copy of the  
31 pleadings, notices, and other materials relating to the code  
32 enforcement proceeding received by the transferor.

33  
34 (3) Disclose, in writing, to the prospective transferee that the  
35 new owner will be responsible for compliance with the  
36 applicable code and with orders issued in the code  
37 enforcement proceeding.

38  
39 (4) File a notice with the code compliance department of the  
40 transfer of the property, with the identity and address of the  
41 new owner and copies of the disclosures made to the new  
42 owner, within five (5) days after the date of the transfer. A  
43 failure to make the disclosures described in this subsection  
44 before the transfer creates a rebuttable presumption of  
45 fraud. If the property is transferred before the hearing, the  
46 proceeding shall not be dismissed, but the new owner shall

1 be provided a reasonable period of time to correct the  
2 violation before the hearing is held.

3  
4 (f) The village commission finds that aesthetics are paramount to  
5 maintaining an attractive and marketable community. The  
6 violations enumerated below severely damage the aesthetics and  
7 livability of the community immediately upon their commission.  
8 Such damage cannot be repaired or reversed. Therefore, the village  
9 commission hereby deems a violation of this section an irreparable  
10 and irreversible violation. As a result, the Village of Biscayne Park  
11 adopts supplemental and alternative code enforcement procedures  
12 pursuant to F.S. §§ 162.13 and 162.22, as amended, to authorize  
13 code compliance officers to issue administrative citations for  
14 review before the special magistrate or code compliance board. A  
15 code compliance officer shall have the sole discretion in  
16 determining whether to issue an administrative citation or a notice  
17 of violation for the following offenses:  
18

- 19 (1) Open feeding that causes a gathering of more than four (4)  
20 dogs or four (4) cats or combination thereof totaling four  
21 (4), in violation of section 3-4 of the code;  
22
- 23 (2) Excessive barking or howling of dogs, in violation of  
24 section 3-21 of the code;  
25
- 26 (3) Parking not on an approved surface where there is an  
27 approved parking surface as required by section 5.6.1 of the  
28 Land Development Code;  
29
- 30 (4) Garbage cans and trash receptacles not placed behind face  
31 of building and screened from view, in violation of section  
32 6.3.2 of the Land Development Code;  
33
- 34 (5) Domestic trash and recycling materials placed at the  
35 property line and/or not removed under the requirements of  
36 section 6.3.3 of the Land Development Code;  
37
- 38 (6) Trees and garden refuse placed at the property line and/or  
39 not removed under the requirements of section 6.3.4 of the  
40 Land Development Code;  
41
- 42 (7) Overgrown grass in violation of section 8.4.1 of the Land  
43 Development Code;  
44
- 45 (8) Offensive noise, in violation of section 10-1 of the code.  
46

1 In the issuance of an administrative citation, the following procedures shall be  
2 used:

3  
4 (1) For the offenses enumerated above, a code compliance officer  
5 who, upon personal investigation, has reasonable cause to believe  
6 that there is a violation, shall have the authority to issue an  
7 administrative citation to the alleged violator and/or record owner  
8 of the subject property.  
9

10 (2) The administrative citation issued shall be in a form approved by  
11 the village manager and shall contain:

- 12  
13 a. The date and time of issuance.  
14  
15 b. The name and address of the person to whom the  
16 administrative citation is issued.  
17  
18 c. The facts constituting reasonable cause.  
19  
20 d. The section of the code that is violated.  
21  
22 e. The name of the code compliance officer.  
23  
24 f. The procedure for the person to follow in order to pay or  
25 contest the administrative citation.  
26  
27 g. The penalty, including administrative costs, if the person  
28 elects to contest the administrative citation and is found in  
29 violation.  
30  
31 h. The penalty if the person elects to pay the administrative  
32 citation.  
33  
34 i. A conspicuous statement that if the person fails to pay the  
35 penalty within the time allowed, or fails to appear before  
36 the special magistrate or code compliance board, that the  
37 person shall be deemed to have waived his or her right to  
38 contest the administrative citation and that, in such case, a  
39 final order and/or judgment may be entered against the  
40 person up to five hundred dollars (\$500.00).  
41

42 (3) After issuing the administrative citation, the code compliance officer  
43 shall deposit an original with the village manager or their designee.  
44

45 (4) A person who has been served with an administrative citation ~~shall~~  
46 may elect either to:

- 1  
2 a. Correct the violation immediately and pay within fourteen (14)  
3 days of service of the administrative citation the penalty in the  
4 manner indicated on the administrative citation; or  
5  
6 b. Request a hearing before the special magistrate or code compliance  
7 board, depending on the applicable jurisdiction.  
8

9 14.1.8 Conduct of hearing.  
10

11 ~~(a) — The chairman of the code compliance board may call hearings of the~~  
12 ~~board, and hearings may also be called by written notice signed by at least three~~  
13 ~~(3) members of the code compliance board. The board, at any hearing, may set a~~  
14 ~~future hearing date. The board shall attempt to convene no less frequently than~~  
15 ~~once every two (2) months, but it may meet more or less often as the demand~~  
16 ~~necessitates. Minutes shall be kept of all hearings by the board, and all hearings~~  
17 ~~and proceedings shall be open to the public. The village shall provide clerical and~~  
18 ~~administrative personnel as may be reasonably required by the board for the~~  
19 ~~proper performance of its duties.~~  
20

21 ~~(b) — Each case before the code compliance board shall be presented by a~~  
22 ~~code compliance officer appointed by the village for that purpose.~~  
23

24 ~~(c) — The special magistrate and code compliance board shall proceed to~~  
25 ~~hear the cases on the agenda for that day. All testimony shall be under oath and~~  
26 ~~shall be recorded. The board shall take testimony from the code compliance~~  
27 ~~officer, the alleged violator, and any witnesses called. Formal rules of evidence~~  
28 ~~shall not apply, but fundamental due process shall be observed and govern said~~  
29 ~~proceedings.~~  
30

31 ~~(d) — At the conclusion of the hearing, the special magistrate and code~~  
32 ~~compliance board shall issue findings of fact, based on evidence recorded and~~  
33 ~~conclusions of law, and shall issue an order affording the proper relief consistent~~  
34 ~~with powers granted herein. The finding shall be by motion approved by a~~  
35 ~~majority of those present and voting, except that at least three (3) members of the~~  
36 ~~code compliance board must vote for the action to be official. The order may~~  
37 ~~include a notice that it must be complied with by a specified date and that a fine~~  
38 ~~may be imposed if the order is not complied with by said date. A certified copy of~~  
39 ~~such order may be recorded in the public records of the county and shall~~  
40 ~~constitute notice to any subsequent purchasers, successors in interest, or assigns if~~  
41 ~~the violation concerns real property, and the findings therein shall be binding~~  
42 ~~upon the violator and, if the violation concerns real property, any subsequent~~  
43 ~~purchasers, successors in interest, or assigns. If an order is recorded in the public~~  
44 ~~records pursuant to this subsection and the order is complied with by the date~~  
45 ~~specified in the order, the code compliance board shall issue an order~~

1 ~~acknowledging compliance that shall be recorded in the public records. A hearing~~  
2 ~~is not required to issue such an order acknowledging compliance.~~  
3

4 (a) Upon request of the code inspector, or at such other times as may  
5 be necessary, the special magistrate or chair of the code  
6 compliance board may call a code enforcement hearing; a hearing  
7 also may be called by written notice signed by at least two  
8 members of the code compliance board. Minutes shall be kept of  
9 all code enforcement hearings, and all hearings and proceedings  
10 shall be open to the public. The village commission shall provide  
11 clerical and administrative personnel as may be reasonably  
12 required by the special magistrate or code compliance board for the  
13 proper performance of code enforcement duties.  
14

15 (b) Each case before the special magistrate or code compliance board  
16 shall be presented either (1) a member of the Village  
17 administrative staff, or (2) the Village Attorney. The Village  
18 Attorney shall only present cases in the event of unavailability of  
19 staff, or if a matter involves legal issues requiring argument of  
20 counsel as determined by the Village Manager. If the Village  
21 prevails in prosecuting a case before the special magistrate or  
22 enforcement board, it shall be entitled to recover all costs incurred  
23 in prosecuting the case before the board and such costs may be  
24 included in the lien authorized under s. 162.09(3).  
25

26 (c) The special magistrate or code compliance board shall proceed to  
27 hear the cases on the agenda for that day. All testimony shall be  
28 under oath and shall be recorded. The enforcement board shall take  
29 testimony from the code inspector and alleged violator. Formal  
30 rules of evidence shall not apply, but fundamental due process  
31 shall be observed and shall govern the proceedings.  
32

33 (d) At the conclusion of the hearing, the special magistrate or code  
34 compliance board shall issue written findings of fact, based on  
35 evidence of record and conclusions of law, and shall issue an order  
36 affording the proper relief consistent with powers granted herein.  
37 The finding shall be by motion approved by a majority of those  
38 members present and voting, except that at least three members of  
39 the code compliance board, must vote in order for the action to be  
40 official. The order may include a notice that it must be complied  
41 with by a specified date and that a fine may be imposed and, under  
42 the conditions specified in s. 162.09(1), the cost of repairs may be  
43 included along with the fine if the order is not complied with by  
44 said date. A certified copy of such order may be recorded in the  
45 public records of Miami-Dade County, Florida and shall constitute  
46 notice to any subsequent purchasers, successors in interest, or

1                   assigns if the violation concerns real property, and the findings  
2                   therein shall be binding upon the violator and, if the violation  
3                   concerns real property, any subsequent purchasers, successors in  
4                   interest, or assigns. If an order is recorded in the public records  
5                   pursuant to this subsection and the order is complied with by the  
6                   date specified in the order, the special magistrate or code  
7                   compliance board must issue an affidavit acknowledging  
8                   compliance that shall be recorded in the public records of Miami-  
9                   Dade County, Florida. A hearing is not required to issue such an  
10                   affidavit acknowledging compliance.

11  
12                   14.1.9   Powers of the special magistrate and code compliance board. The  
13                   special magistrate and code compliance board shall have the power to:

- 14  
15                   (1)     Adopt rules for the conduct of its hearings.  
16  
17                   (2)     Subpoena alleged violators and witnesses to its hearings.  
18                   Subpoenas may be served by the police department.  
19  
20                   (3)     Subpoena evidence to its hearings.  
21  
22                   (4)     Take testimony under oath.  
23  
24                   (5)     Issue orders having the force of law commanding whatever steps  
25                   are necessary to bring a violation into compliance.  
26

27                   14.1.10   Fines; liens.

28  
29                   (a)     The special magistrate and code compliance board, pursuant to their  
30                   respective authority delegated herein, upon notification by the code compliance  
31                   officer that a previous order ~~of the board~~ has not been complied with by the set  
32                   time, or finds a person to be a repeat violator under subsection (c), may order the  
33                   violator to pay a fine in an amount specified in this section for each day the  
34                   violation continues past the date set by the special magistrate or code compliance  
35                   board for compliance or, in the case of a repeat violation, for each day the repeat  
36                   violation continues past the date of notice to the violator of the repeat violation. If  
37                   a finding of a violation or a repeat violation has been made as provided in this  
38                   part, a hearing shall not be necessary for issuance of the order imposing the fine.  
39

40                   ~~An "uncorrectable violation" is a violation which cannot be remedied after~~  
41                   ~~the violation has been committed because the violation constitutes a single~~  
42                   ~~prohibited act rather than an ongoing condition or circumstance. Each~~  
43                   ~~reoccurrence of an uncorrectable violation shall constitute a separation violation~~  
44                   ~~and shall subject the violator to an additional penalty in the same amount as that~~  
45                   ~~prescribed for the original violation. If, however, a violator has been once found~~  
46                   ~~guilty of an uncorrectable violation, and causes the same uncorrectable violation~~

1 to occur a second time, each recurrence of the uncorrectable violation by such  
2 violator shall constitute a "repeat violation."  
3

4 "~~Continuing violations~~" are those violations which remain uncorrected  
5 beyond the reasonable time period for correction contained in either the civil  
6 violation notice or the final order of the code compliance board, whichever is  
7 applicable. For each day of continued violation after the time for correction has  
8 run, an additional penalty in the same amount as that prescribed for the original  
9 violation shall be added.  
10

11 A "repeat violation" is a recurring violation of an ordinance by a violator  
12 who has previously been guilty of the same violation within the last five (5) years.  
13 In the case of correctable violations, a repeat violation can occur only after  
14 correction of the previous violation has been made. For the first repeat violation,  
15 the amount of the civil penalty shall be double the amount of penalty prescribed  
16 for the original violation.  
17

18 (b) Amount of fine.  
19

20 (1) The fine amount(s) are referenced in a resolution kept on file by the  
21 village clerk.  
22

23 (2) In determining the amount of the fine, if any, the special magistrate  
24 or code compliance board shall consider the following factors:  
25

- 26 a. The gravity of the violation;
- 27
- 28 b. Any actions taken by the violator to correct the violation; and
- 29
- 30 c. Any previous violations committed by the violator.
- 31
- 32 (c) Reduction of fine imposed pursuant to this section.  
33

34 (1) The special magistrate and code compliance board, pursuant to their  
35 respective authority delegated herein, is hereby delegated the authority to may  
36 hear requests for reduction of fines pursuant to this section and make the final  
37 decision on behalf of the village.  
38

39 (2) For all requests for reduction of fine, the code compliance officer  
40 shall submit a written recommendation to the special magistrate code compliance  
41 board. In formulating the recommendation, the code compliance officer shall  
42 consider criteria, which includes, but is not limited to, the following:  
43

- 44 a. The cooperation of the ~~respondent~~ petitioner seeking reduction,  
45 including whether the ~~respondent~~ petitioner had appeared before

1 the special magistrate or code compliance board at the original  
2 hearing;

- 3
- 4 b. The documentation provided ~~by the respondent~~ in support of the  
5 fine reduction request;
- 6
- 7 c. Whether the ~~respondent~~ petitioner seeking reduction has new  
8 evidence or information which could not be provided at the  
9 original hearing;
- 10
- 11 d. Whether there was any extraordinary hardship which existed or  
12 currently exists;
- 13
- 14 e. Whether the ~~respondent~~ petitioner seeking reduction is presently  
15 ~~has come~~ into compliance with the prior order of the special  
16 magistrate and/or code compliance board;
- 17
- 18 f. The number of days that the violation existed;
- 19
- 20 g. Whether the ~~respondent~~ petitioner seeking reduction ~~has been~~ was  
21 previously deemed a repeat violator by order of the special  
22 magistrate and/or code compliance board;
- 23
- 24 ~~h. Whether the property is homestead or non-homestead property;~~  
25 ~~and~~
- 26
- 27 i.h. The total administrative cost to the village for the handling of the  
28 case, which cost will be inclusive of staff time and recording and  
29 release of lien fees.

30

31 (3) When issuing a determination for a fine reduction request, the ~~The~~  
32 special magistrate code compliance board shall consider the same criteria as the  
33 code compliance officer.

34

35 (4) The special magistrate code compliance board shall not waive  
36 administrative costs incurred by the ~~local government~~ Village in enforcing its  
37 codes. In addition, the ~~code compliance board and the administrative panel~~ special  
38 magistrate shall not waive costs of any repairs incurred by the Village local  
39 government.

40

41 (d) A certified copy of an order imposing a fine, or a fine plus repair  
42 costs, may be recorded in the public records of Miami-Dade County, Florida and  
43 thereafter shall constitute a lien against the land on which the violation exists, or,  
44 if the violator does not own the land, upon any other real or personal property  
45 owned by the violator. Upon petition to the circuit court, such order shall be  
46 enforceable in the same manner as a court judgment by the sheriffs of this state,

1 including execution and levy against the personal property of the violator but such  
2 order shall not be deemed otherwise to be a judgment of a court except for  
3 enforcement purposes. A fine imposed pursuant to this part shall continue to  
4 accrue until the violator comes into compliance or until judgment is rendered in a  
5 suit to foreclose on a lien filed pursuant to this section, whichever occurs first.  
6 After three (3) months from the filing of any such lien which remains unpaid, the  
7 special magistrate or code compliance board may authorize the village attorney to  
8 initiate court proceedings to foreclose upon the lien. No lien created pursuant to  
9 the provisions of this chapter may be foreclosed on real property, which is a  
10 homestead under the Florida Constitution, Art. X, § 4. For purposes of this  
11 section, there is a rebuttable presumption that a residential property for which a  
12 homestead exemption for taxation was granted according to the certified rolls of  
13 the latest assessment by the county property appraiser, before the filing of the  
14 foreclosure action, is an owner-occupied residential property.

15  
16 14.1.11 Duration of lien.

17  
18 No lien provided by the ~~Code Compliance Boards Act~~ for herein shall continue to  
19 encumber real property for a longer period than twenty (20) years after the  
20 certified copy of an order imposing a fine has been recorded, unless within that  
21 time an action to foreclose on the lien is commenced in a court of competent  
22 jurisdiction. In an action to foreclose on the lien, the prevailing party is entitled to  
23 recover all costs, including a reasonable attorney's fee, that it incurs in the  
24 foreclosure. The continuation of the lien effected by the commencement of the  
25 action shall not be good against creditors or subsequent purchasers for valuable  
26 consideration without notice, unless a notice of lis pendens is recorded.

27  
28 14.1.12 Appeal.

29  
30 (a) Pursuant to Section 162.11, Florida Statutes, An an aggrieved  
31 party, including the Village, may appeal a final order of the special  
32 magistrate or code compliance board to the ~~circuit court~~ Circuit  
33 Court of the Eleventh Judicial Circuit in and for Miami-Dade  
34 County, Florida. Such an appeal shall not be a hearing ~~de~~ de novo,  
35 but shall be limited to appellate review of the record created before  
36 the special magistrate or code compliance board.

37  
38 (b) Pursuant to the applicable Florida Rules of Appellate Procedure,  
39 the following documents must be filed within thirty (30) calendar  
40 days of rendition of the order to be appealed:

41  
42 (1) Original notice of appeal with the Village Clerk;

43  
44 (2) File a copy of the notice of appeal and order being  
45 appealed, accompanied with the requisite court filing fees,  
46 with the Miami-Dade County Clerk of the Court.

1  
2 (c) The Village Clerk shall process any requests for a copy of the  
3 record created before the special magistrate or code compliance  
4 board. The Village may assess a reasonable charge for the  
5 preparation and transmission of the record to be paid by the  
6 petitioner in accordance with Section 119.07, Florida Statutes.  
7

8 14.1.13 Notice and procedures.  
9

10 (a) All notices required by this part shall be provided to the alleged  
11 violator by:

12  
13 (1) Certified mail, return receipt requested, provided if such  
14 notice is sent under this subsection to the owner of the  
15 property in question at the address listed in the tax  
16 collector's office for tax notices, and at any other address  
17 provided to the village by such owner and is returned as  
18 unclaimed or refused, notice may be provided by posting as  
19 described in subsections (b)(1) and (2) below, and by first  
20 class mail directed to the addresses furnished to the ~~local~~  
21 ~~government~~ Village with a properly executed proof of  
22 mailing or affidavit confirming the first class mailing; or

23  
24 (2) Hand delivery by the sheriff or other law enforcement  
25 officer, code compliance officer, or other person designated  
26 by the ~~local governing body~~ Village; or

27  
28 (3) Leaving the notice at the violator's usual place of residence  
29 with any person residing therein who is above fifteen (15)  
30 years of age and informing such person of the contents of  
31 the notice.  
32

33 (b) (1) In lieu of notice as described in subsection (a), such notice  
34 may be posted at least ten (10) days prior to the hearing, or  
35 prior to the expiration of any deadline contained in the  
36 notice, in at least two (2) locations, one of which shall be  
37 the property upon which the violation is alleged to exist and  
38 the other of which shall be at the Village Hall.  
39

40 (2) Proof of posting shall be by affidavit of the person posting  
41 the notice, which affidavit shall include a copy of the notice  
42 posted and the date and places of its posting.  
43

44 (c) Evidence that an attempt has been made to hand deliver or mail  
45 notice as provided in subsection (a), together with proof of notice  
46 or posting as provided in subsection (b), shall be sufficient to show

1 that the notice requirements of this chapter have been met, without  
2 regard to whether or not the alleged violator actually received such  
3 notice.  
4

5 14.1.14 Enforcement procedures by code compliance officer.  
6

7 (a) For the purposes of this chapter, a "code compliance officer" is  
8 defined to be any agent or employee of the village or Miami-Dade  
9 County whose duty is to assure the enforcement of and compliance  
10 with the village code, the Florida Building Code, or Miami-Dade  
11 County, as applicable. Prior to being provided the authority to  
12 initiate enforcement proceedings under this chapter, a code  
13 compliance officer shall be required to successfully complete a  
14 criminal background investigation as prescribed by administrative  
15 order of the county manager. Subject to the requirements of section  
16 8CC-11, a "code compliance officer" is also defined to be any  
17 agent or employee of a municipality who has been authorized  
18 pursuant to that section to assure code compliance. Municipal  
19 employees shall also be required to successfully complete a  
20 criminal background investigation prior to being provided  
21 authority to initiate enforcement proceedings under this chapter.  
22

23 (b) For the purposes of this chapter, "violators" shall be deemed to be  
24 those persons or entities legally responsible for the violation of the  
25 village's Code of Ordinances, applicable provision of the Miami-  
26 Dade County Code, or the Florida Building Code.  
27

28 (c) A code compliance officer who finds a violation of an ordinance  
29 shall determine a reasonable time period within which the violator  
30 must correct the violation. This determination shall be based on  
31 considerations of fairness; practicality; ease of correction; ability to  
32 correct; severity of violation; nature, extent and probability of  
33 danger or damage to the public; and other relevant factors relating  
34 to the reasonableness of the time period prescribed. A time for  
35 correction need not be specified if the violation is deemed to be an  
36 uncorrectable violation.  
37

38 (d) Service shall be effected by delivering the civil violation notice to  
39 the violator or his agent, or by leaving the civil violation notice at  
40 the violator's usual place of abode with any person residing therein  
41 who is fifteen (15) years of age or older and informing that person  
42 of its contents. If such service cannot be effected, the notice may  
43 be sent by certified mail, return receipt requested, or by posting of  
44 the civil violation notice in a conspicuous place on the premises or  
45 real property upon which the violation has been observed or by  
46 mailing to or posting the civil violation notice at the property

1 owner's mailing address as listed in the tax records of Miami-Dade  
2 County. Such posting of the notice or violation shall be deemed  
3 proper service, and the time for compliance, stated in the notice,  
4 shall commence with the date such notice is posted.  
5

6 (e) A code compliance officer is authorized to record in the public  
7 record the civil violation notice or a notice of violation which is  
8 based upon the civil violation notice. The recording of the civil  
9 violation or a notice of violation under this section shall not act as  
10 or be a lien on the property and shall not act as a notice of a lien on  
11 the property but shall merely act as public notice of the existence  
12 of the violation.  
13

14 (f) A code compliance officer must have, at a minimum, a Florida  
15 Association of Code Enforcement (F.A.C.E.) Level 1 certification  
16 within one (1) year of hire.  
17

## 18 CHAPTER 15. - ENFORCEMENT

### 19 15.1. - Generally.

20  
21  
22 15.1.1 Enforcement of Land Development Code. The planning board,  
23 special magistrate, and the code compliance board shall enforce the Land  
24 Development Code.  
25

### 26 15.2. - Building official.

27  
28 15.2.1 Designation. The building official shall be designated by the  
29 appointing authority, whatever the official title, to enforce the provisions of the  
30 Florida Building Code and other applicable laws; provided, the official may act  
31 with the aid and through authorized assistants.  
32

33 15.2.2 Authority. The building official is hereby authorized and directed  
34 to interpret and enforce all of the provisions of this code subject to the powers  
35 vested in the planning board and the code compliance board.  
36

### 37 15.3. - Violations and general penalty.

38  
39 15.3.1 General penalty. Whenever in this code or in any ordinance of  
40 the village any act is prohibited or is made or declared to be unlawful or an  
41 offense, or whenever in such code or ordinance the doing of any act is required or  
42 the failure to do any act is declared to be unlawful, where no specific penalty is  
43 provided therefor, the violation of any such provision of this code or any  
44 ordinance shall be punished by a fine not to exceed five hundred dollars  
45 (\$500.00), or imprisonment for a term not exceeding sixty (60) days, or by both a

1 fine and imprisonment. Each day violation of any provision of this code or of any  
2 ordinance shall continue shall constitute a separate offense.

3  
4 15.3.2 Continuation of violation. In addition to the penalties  
5 hereinabove provided, any condition caused or permitted to exist in violation of  
6 any of the provisions of this code or any ordinance shall be deemed a public  
7 nuisance and may be, by the village, abated as provided by law, and each day that  
8 such condition continues shall be regarded as a new and separate offense.

9  
10 15.4. - Other penalties and remedies.

11  
12 15.4.1 Civil remedies. If any building or structure is erected,  
13 constructed, reconstructed, altered, repaired, or maintained or any building,  
14 structure, land, or water is used in violation of this code, the village, through the  
15 village attorney, may institute any appropriate civil action or proceedings in any  
16 court to prevent, correct, or abate the violation.

17  
18 **Section 3. Severability.** Should any section, provision, paragraph, sentence, clause of  
19 word of this Ordinance or portion hereof be held or declared by any court of competent jurisdiction  
20 to be unconstitutional or invalid, in part or application, it shall be considered as eliminated and shall  
21 not affect the validity of the remaining portions or applications of this Ordinance.

22 **Section 4. Codification.** It is the intention of the Village Commission of the Village of  
23 Biscayne Park, that the provisions of this Ordinance shall become and made a part of the Land  
24 Development Code of the Village of Biscayne Park, Florida, and that the Sections of this Ordinance  
25 may be renumbered, re-lettered and the word "Ordinance" may be changed to "Section," "Article"  
26 or other word or phrase in order to accomplish such intention.

27 **Section 5. Conflicts.** That all Ordinances or parts of Ordinances, Resolutions or parts  
28 thereof in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

29 **Section 6. Effective Date.** This Ordinance shall become effective immediately upon its  
30 passage and adoption, in accordance with the Village Charter.

31 The foregoing Ordinance was offered by Mayor Truppman who moved its adoption.





Discover. Connect. Compete.

ALM Media, LLC  
PO Box 936174  
Atlanta, GA 31193-6174

Please Remit To:

**Daily Business Review**

Miami Dade

Customer No: 9008253

VILLAGE OF BISCAYNE PARK  
Attention To: ROSEANN PRADO  
600 NE 114TH ST  
BISCAYNE PARK, FL 33161

Invoice #:	10000433955-1025
Invoice Date:	10/25/2019
Due Date:	Due Upon Receipt
AMOUNT DUE:	\$94.40

PLEASE RETURN THIS SECTION WITH PAYMENT

Amount Remitted

TEAR HERE

**Daily Business Review**

Miami Dade

Invoice Date: 10/25/2019	Customer #: 9008253
--------------------------	---------------------

Invoice #	Description	Amount
10000433955-1025	<b>Placement/Position:</b> Bids/Hearngs/Meetings/Ordinances/Hearings <b>Run Dates:</b> 10/25/2019 <b>Ad Size:</b> 2 x 5.28 Inches VILLAGE OF BISCAYNE PARK - PUBLIC HEARING - ORDINANCE NO. 2019-05 - NOV. 05, 2019	\$94.40
	<b>Subtotal</b>	\$94.40
	<b>Total Due</b>	\$94.40

Visit our online payment portal at <http://almpaymentcenter.com> to pay via credit card

For billing questions, please email: [ALMcollection@alm.com](mailto:ALMcollection@alm.com).



Discover. Connect. Compete.

# MIAMI DAILY BUSINESS REVIEW

Published Daily except Saturday, Sunday and  
Legal Holidays  
Miami, Miami-Dade County, Florida

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE:

Before the undersigned authority personally appeared GUILLERMO GARCIA, who on oath says that he or she is the DIRECTOR OF OPERATIONS, Legal Notices of the Miami Daily Business Review f/k/a Miami Review, a daily (except Saturday, Sunday and Legal Holidays) newspaper, published at Miami in Miami-Dade County, Florida; that the attached copy of advertisement, being a Legal Advertisement of Notice in the matter of

VILLAGE OF BISCAYNE PARK - PUBLIC HEARING -  
ORDINANCE NO. 2019-05 - NOV. 05, 2019

in the XXXX Court,  
was published in said newspaper in the issues of

10/25/2019

Affiant further says that the said Miami Daily Business Review is a newspaper published at Miami, in said Miami-Dade County, Florida and that the said newspaper has heretofore been continuously published in said Miami-Dade County, Florida each day (except Saturday, Sunday and Legal Holidays) and has been entered as second class mail matter at the post office in Miami in said Miami-Dade County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

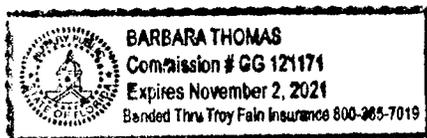


Sworn to and subscribed before me this  
25 day of OCTOBER, A.D. 2019



(\$SEAL)

GUILLERMO GARCIA personally known to me



## PUBLIC NOTICE NOTICE OF PUBLIC HEARING

Notice is hereby given that the Village Commission of the Village of Biscayne Park, Florida will hear the following ordinance at a Public Hearing to be held beginning at 7:00 PM, Tuesday, November 05, 2019, at the Log Cabin, 640 NE 114th Street, Biscayne Park, FL 33161.

ORDINANCE NO. 2019-05

**AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AMENDING CHAPTERS 14 AND 15 OF THE LAND DEVELOPMENT CODE OF THE VILLAGE OF BISCAYNE PARK; AUTHORIZING SPECIAL MAGISTRATE POSITION FOR CERTAIN CODE ENFORCEMENT PROCEEDINGS; PROVIDING FOR ORDINANCES IN CONFLICT; REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.**

All documentation pertaining to this notice may be inspected by the public at the Office of the Village Clerk in Village Hall, 600 NE 114th Street. Interested parties may appear at the meeting and be heard with respect to the proposed Ordinances.

In accordance with the provision of F.S. Section 286.0105, should any person seek to appeal any decision made by the Commission with respect to any matter considered at this meeting, such person will need to ensure that a verbatim record of the proceedings is made; which record includes the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans with Disabilities Act of 1990, persons who require special accommodation to participate in the proceedings should call the Village Clerk's office at (305) 899-8000 no later than (4) days prior to the proceeding for assistance. On day of meeting, if called in by 11:00am, we will do our best to accommodate your request. Roseann Prado, Village Clerk  
10/25 19-161/0000433955M

# Search Public Notices

---

Select a county ▾	Category		
0000433955-01	10/25/2019	10/25/2019	Search

---

10/25/2019



**PUBLIC NOTICE**  
**NOTICE OF PUBLIC HEARING**

CATEGORY      Hearings FL  
AD NUMBER      0000433955-01

Notice is hereby given that the Village Commission of the Village of Biscayne Park, Florida will hear the following ordinance at a Public Hearing to be held beginning at 7:00 PM, Tuesday, November 05, 2019, at the Log Cabin, 640 NE 114th Street, Biscayne Park, FL 33161.

**ORDINANCE NO. 2019-05**

**AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AMENDING CHAPTERS 14 AND 15 OF THE LAND DEVELOPMENT CODE OF THE VILLAGE OF BISCAYNE PARK; AUTHORIZING SPECIAL MAGISTRATE POSITION FOR CERTAIN CODE ENFORCEMENT PROCEEDINGS; PROVIDING FOR ORDINANCES IN CONFLICT, REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.**All documentation pertaining to this notice may be inspected by the public at the Office of the Village Clerk in Village Hall, 600 NE 114th Street. Interested parties may appear at the meeting and be heard with respect to the proposed Ordinances.  
In accordance with the provision of F.S. Section 286.0105, should any person seek to appeal any decision made by the Commission with respect

to any matter considered at this meeting, such person will need to ensure that a verbatim record of the proceedings is made; which record includes the testimony and evidence upon which the appeal is to be based. In accordance with the Americans with Disabilities Act of 1990, persons who require special accommodation to participate in the proceedings should call the Village Clerk's office at (305) 899-8000 no later than (4) days prior to the proceeding for assistance. On day of meeting, if called in by 11:00am, we will do our best to accommodate your request. Roseann Prado, Village Clerk  
10/25 19-161/0000433955M

Rebecca A. Rodriguez, Esq.  
Of Counsel

954-761-8111  
REBECCA.RODRIGUEZ@GRAY-ROBINSON.COM

401 EAST LAS OLAS BLVD.  
SUITE 1000  
POST OFFICE BOX 2328 (33303-9998)  
FORT LAUDERDALE, FLORIDA 33301  
TEL 954-761-8111  
FAX 954-761-8112  
gray-robinson.com

BOCA RATON  
FORT LAUDERDALE  
FORT MYERS  
GAINESVILLE  
JACKSONVILLE  
KEY WEST  
LAKELAND  
MELBOURNE  
MIAMI  
NAPLES  
ORLANDO  
TALLAHASSEE  
TAMPA  
WASHINGTON, DC  
WEST PALM BEACH

**MEMORANDUM**

**TO: Village Commission, Village of Biscayne Park, Florida**

**FROM: Rebecca A. Rodriguez, Village Attorney**

**DATE: November 5, 2019**

**SUBJECT: Proposed Ordinance No. 2019-06 – An Ordinance Of The Village Commission Of The Village Of Biscayne Park, Florida, Amending Section 2-16 Of The Village Of Biscayne Park Code Of Ordinances; Adopting Commission Rules And Procedures For Meetings And Workshops; Providing For Ordinances In Conflict, Repealer, Codification, Severability And An Effective Date.**

---

**Background**

On July 24, 2019 and September 18, 2019 the Village Commission hosted two public workshops to explore codifying various potential rules and procedures for future Village Commission meetings and workshops.

The Village Commission further discussed these potential rules and procedures during its regular meeting on October 1, 2019. The Village Commission received public comments from Village residents during the workshops and the October regular meeting, and also discussed various sample rules and procedures from other jurisdictions.

After these discussions, the attached draft ordinance was prepared at the directive of the Village Commission for a first reading. This draft ordinance is presented to the Village Commission for a public hearing and first reading during the Village Commission's November 5, 2019 regular meeting.

**Legal Note**

The attached draft ordinance is provided for a first reading pursuant to Fla. Stat. § 166.041.

**Recommendation**

Provide any feedback and/or changes to this draft ordinance during the first reading, and have the second reading during the December regular commission meeting to approve and adopt the ordinance.

**Attachments**

1. Draft ordinance for first reading.

November 5, 2019  
Item # 9.b

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14

**ORDINANCE NO. 2019-06**

**AN ORDINANCE OF THE VILLAGE COMMISSION OF  
THE VILLAGE OF BISCAYNE PARK, FLORIDA,  
AMENDING SECTION 2-16 OF THE VILLAGE OF  
BISCAYNE PARK CODE OF ORDINANCES; ADOPTING  
COMMISSION RULES AND PROCEDURES FOR  
MEETINGS AND WORKSHOPS; PROVIDING FOR  
ORDINANCES IN CONFLICT, REPEALER,  
CODIFICATION, SEVERABILITY AND AN EFFECTIVE  
DATE.**

15           **WHEREAS**, Section 4.01(B) of the Charter of the Village of Biscayne Park (the “Village”) states the Commission shall determine its own rules of procedure and order of business; and

16           **WHEREAS**, Section 4.03(A)(1) of the Village Charter requires the Commission to act by ordinance to adopt or amend an administrative regulation; and

17  
18           **WHEREAS**, Section 4.03(A)(2) of the Village Charter requires the Commission to act by ordinance to establish any rule or regulation the violation of which carries a penalty; and

19  
20           **WHEREAS**, Section 4.03(A)(9) of the Village Charter requires the Commission to act by ordinance to amend or repeal any ordinance previously adopted; and

21  
22           **WHEREAS**, Section 2-16 of the Village’s Code of Ordinances (the “Code”) currently only addresses the dates which regular meetings will be held by the Commission; and

23  
24           **WHEREAS**, the Village Commission is desirous to implement and codify various rules and procedures for its meetings and public workshops, including, but not limited to, rules of debate, rules of decorum, and enforcement guidelines for violating the rules and procedures; and

25  
26  
27           **WHEREAS**, on July 24, 2019, the Village Commission held its first public workshop to receive resident comments and explore various potential rules of procedure; and

28  
29           **WHEREAS**, on September 18, 2019, the Village Commission held its second public workshop to receive resident comments and explore various potential rules of procedure; and

1           **WHEREAS**, on October 1, 2019, the Village Commission publicly discussed the drafting  
2 this ordinance during its regular Commission meeting; and

3           **WHEREAS**, the Village Commission held a public hearing and first reading for this  
4 ordinance during its regular Commission meeting on November 5, 2019;

5           **WHEREAS**, the ordinance passed the first reading on November 5, 2019; and

6           **WHEREAS**, on November \_\_, 2019, the Village advertised a notice of the ordinance’s  
7 second reading and proposed enactment in the Daily Business Review in compliance with Section  
8 166.041(3)(a), Florida Statutes;

9           **NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COMMISSION OF**  
10 **THE VILLAGE OF BISCAYNE PARK, FLORIDA, AS FOLLOWS:**

11           **Section 1. Ratification.** The foregoing “Whereas” clauses are hereby ratified and  
12 confirmed as being true and correct and are hereby made a specific part of this Ordinance upon  
13 adoption hereof.

14           **Section 2. Section 2-16 of the Village Code of Ordinances Amended.** Section 2-16  
15 of the Code of Ordinances for the Village of Biscayne Park, Florida shall be amended to read as  
16 follows:

17           Sec. 2-16. – Rules of procedure for Commission mMeetings and public workshops.

18  
19           (a) GOVERNING RULES; AMENDMENT.

20  
21           Except as may be provided in the Charter, the Code or by these rules, questions of order,  
22 the methods of organization and the conduct of business of the Commission shall be  
23 governed by Roberts’ Rules of Order (current edition).  
24  
25



1           (h)     SPECIAL MEETINGS AND EMERGENCY MEETINGS.

2  
3           (1)     Special meetings. A special meeting of the Commission may be called by  
4           the Village Mayor, or by four (4) the members of the Commission. The  
5           Village Clerk shall forthwith serve verbal and written notice upon each  
6           member of the Commission stating the date, hour and place of the special  
7           meeting and the purpose for which such meeting is called, and no other  
8           business shall be transacted at that meeting. At least twenty-four (24) hours  
9           must elapse between the time the Clerk receives notice in writing and the  
10           time the meeting is to be held.

11           A special meeting of the Village Commissions may be cancelled (1) by  
12           resolution or motion adopted at a regular meeting by a majority of the  
13           Commission members present, or (2) by three (3) members of the Village  
14           Commission each individually serving a notice of request for cancellation  
15           upon the Clerk, who shall provide public notice when a meeting is  
16           cancelled. The Commission chambers shall be made available for a special  
17           meeting whenever such a meeting is called.

18           (2)     Emergency meetings. An emergency meeting of the Commission may be  
19           called by the Village Mayor whenever in his or her opinion an emergency  
20           exists which requires immediate action by the Commission. Whenever such  
21           emergency meeting is called, the Village Mayor shall notify the Clerk who  
22           shall forthwith serve either verbal or written notice upon each member of  
23           the Commission, stating the date, hour and place of the meeting and the  
24           purpose for which it is called, and no other business shall be transacted at  
25           that meeting. At least twenty-four (24) hours shall elapse between the time  
26           the Clerk receives notice of the meeting and the time the meeting is to be  
27           held. An emergency meeting of the Village Commission may be cancelled  
28           by resolution or motion adopted at a regular meeting by a simple majority  
29           of the Commission members present. The Commission chambers shall be  
30           made available for an emergency meeting whenever such a meeting is  
31           called.

32           After an emergency meeting, the Commission shall publicly ratify both the  
33           calling of the emergency meeting and any emergency actions taken therein,  
34           during its next regular commission meeting by adoption of a resolution. A  
35           simple majority vote of Commission members present is required for the  
36           ratification.

37           (3)     Notice to Commissioners. If after reasonable diligence, it is impossible to  
38           give notice to each Commissioner, such failure shall not affect the legality  
39           of the meeting if a quorum is present. The minutes of each special or  
40           emergency meeting shall show the manner and method by which notice of  
41           such special or emergency meeting was given to each member of the  
42           Commission, or shall show a waiver of notice. All special or emergency  
43           meetings shall be open to the public and shall be held and conducted in the

1 Village Hall, or other suitable location within the Village of Biscayne Park,  
2 Florida. Minutes thereof shall be kept by the Clerk.

- 3 (4) Waiver of Requirements. No special or emergency meeting shall be held  
4 unless notice thereof shall be given in compliance with the provisions of  
5 this rule, or notice thereof is waived by a supermajority vote of the entire  
6 membership of the Commission.

7  
8 (i) PUBLIC WORKSHOPS.

- 9 (1) Purpose. The Commission may, by a simple majority vote, schedule a  
10 public workshop to receive resident comments or publicly discuss any issue.  
11 Workshops shall be scheduled publicly by a simple majority vote of  
12 Commission members present, with a clear and express workshop objective  
13 stated at the time of the vote.
- 14 (2) Duties of Sponsoring Commissioner. The sponsoring Commission member  
15 who moved to schedule a public workshop must provide their supporting  
16 documentation and materials for the workshop to the Village Clerk at least  
17 one (1) week in advance of the workshop date. The Village Clerk shall post  
18 the agenda and all supporting materials in advance of the workshop.
- 19 (3) No action items permitted. The Village Commission may not adopt any  
20 resolutions or ordinances during a public workshop. This prohibition cannot  
21 be waived by a vote of the Commission, even if said vote is unanimous.

22 (j) CANCELLATION PROCEDURES.

- 23 (1) Authority to cancel. The Village Manager shall have the authority to cancel  
24 any scheduled Commission meeting or public workshop.
- 25 (2) Basis for cancellation. At the next regular Commission meeting, the Village  
26 Manager shall provide the Village Commission with a written  
27 memorandum explaining the basis for cancellation.
- 28 (3) Notice to public for cancellation. The Village Clerk shall post all meeting  
29 and workshop cancellation notices on the Village website. The Village  
30 Clerk shall also post cancellation notices at the entrances of Village Hall on  
31 the date of the cancelled meeting.

32 (k) AGENDA FOR MEETINGS AND WORKSHOPS.

- 33 (1) Five day rule. A copy of each agenda item shall be furnished to the members  
34 of the Commission not later than five (5) business days before a vote may  
35 be called on the item. The provisions of this rule shall be deemed waived  
36 unless asserted by a Commissioner before the board takes action on the  
37 resolution, ordinance, motion or other item in question. This rule is not  
38 applicable to special or emergency meetings called in compliance with the  
39 Village Code and Charter.

- 1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46
- (2) *Publishing Agenda to the Public.* The agenda for a regular commission meeting shall be published by the Village Clerk no later than the Friday prior to that meeting. This requirement does not apply to special commission meetings, nor emergency or time sensitive matters which may be added to an agenda due to exigent circumstances as provided herein.
  
  - (3) *Minimum Standards for Proposed Agenda Items.* Proposed agenda items must include a cover memorandum providing, at minimum, the following information:
    - (A) *Background.* The cover memorandum must include a general background of the item being presented to the Village Commission.
  
    - (B) *Recommended Action.* The cover memorandum must express a clear proposed course of action to the Village Commission.
  
    - (C) *Financial Impact.* The cover memorandum must include an estimated financial impact. The memorandum must expressly state whether the adopted budget allocated funds for the proposed item. In the event a proposed item is contingent upon receiving grant funds, the memorandum shall so state.
  
    - (D) *Village Clerk.* The Village Clerk shall ensure all agenda materials conform to the requirements provided herein. The Village Clerk shall promptly notify a submitter of a deficient proposed item and provide an opportunity to correct the materials to be included in the agenda.
  
  - (4) *Emergency matters; time sensitive matters.* A matter may be placed on the meeting agenda to meet a public emergency or other time sensitive circumstance. Items placed on the agenda as an emergency or time sensitive matter shall so state. The Commission must ratify the emergency or time sensitive circumstance by a majority vote of Commission members present for the item to proceed.
  
  - (5) *Sponsorship; Authority to Sponsor or Present Agenda Items.* A Commissioner, Village Manager, Village Attorney, Village Clerk, or Village department head may sponsor any report or memorandum to be presented before the Commission. A Village Commissioner may assume sponsorship of any ordinance, resolution, report, or other matter.
  
  - (6) *Prime Sponsorship and Co-Sponsorship.* When a resolution or ordinance is placed on the agenda at the request of a Commissioner, the Commissioner who requested the preparation of the item shall be designated as the prime sponsor. Any other commissioner who wishes to sponsor the resolution or

1 ordinance shall so state during agenda approval and be designated a co-  
2 sponsor of the item.

3  
4 (7) Limitation on Amount of Sponsored Agenda Items. No Commissioner shall  
5 be a prime sponsor of a total of more than three (3) action items on a single  
6 regular Commission agenda unless the Presiding Officer of the Commission  
7 authorizes the placement of additional items on the agenda by a particular  
8 Commissioner when approving the agenda. For purposes of this section, an  
9 "action item" means an ordinance for first reading or a resolution. This  
10 provision shall not be applied to ordinances or resolutions which are  
11 intended to correct scrivener's errors, or have "rolled over" from a prior  
12 meeting's agenda.

13 (8) Limitation on Deferral of Agenda Items. An agenda item shall be deemed  
14 withdrawn upon its third deferral. The provisions of this subsection shall  
15 not apply to the certification of any election, quasi-judicial matters, zoning  
16 applications, or applications to amend the Village's Land Development  
17 Code.

18 (9) Approval by Village Attorney. All ordinances, resolutions, and contract  
19 documents, before presentation to the Village Commission, shall have been  
20 reduced to writing and shall have been approved as to form and legality by  
21 the Village Attorney. All reports or memoranda that supplement pending  
22 ordinances or resolutions shall be presented to the Village Attorney for  
23 review and approval for placement on the agenda, when such reports or  
24 memoranda contain proposed amendatory language that can be used to  
25 formulate amendments to ordinances or resolutions. Prior to presentation all  
26 such documents may be referred to the head of the department under whose  
27 jurisdiction the administration of the subject matter of the ordinance,  
28 resolution or contract document would devolve.

29 (10) Approval by Commission. The proposed agenda must be voted on and  
30 approved by a simple majority vote of the Commission during the meeting.  
31 Amendments to the agenda, such as tabling, deferral, and removal must be  
32 made at that time. Any action item not removed, tabled, or otherwise  
33 deferred prior to the agenda approval vote must proceed to a vote during  
34 that meeting and cannot be subsequently withdrawn.

35  
36 (1) CONDUCT OF MEETINGS AND WORKSHOPS.

37 (1) Call to Order. Promptly at the hour set for each meeting, the members of  
38 the Commission, the Village Attorney, the Village Manager and the Village  
39 Clerk shall take their regular stations on the dais. The Presiding Officer  
40 shall take the chair and shall call the Commission to order immediately. In  
41 the absence of the Presiding Officer, the Village Clerk shall then determine  
42 whether a quorum is present and in that event shall call for the election of a  
43 temporary Presiding Officer. Upon the arrival of the Mayor or Vice-Mayor,

1 the temporary Presiding Officer shall relinquish the chair upon the  
2 conclusion of the business immediately before the Commission.

3 (2) Roll Call. The Village Clerk shall call the roll of the members, and the  
4 names of those present shall be entered in the minutes. The Village Clerk  
5 shall note in the minutes when a Commissioner arrives after the  
6 commencement of a Commission meeting, or if a Commissioner departs a  
7 Commission meeting before it has adjourned.

8 (3) Quorum. A simple majority of the Commission members then in office  
9 shall constitute a quorum. No ordinance, resolution, or motion shall be  
10 adopted by the Commission without the affirmative vote of the majority of  
11 all the members present. A quorum is required for public workshops.

12 (4) Failure to Maintain a Quorum. Should no quorum attend within fifteen  
13 (15) minutes after the hour appointed for the meeting of the Commission,  
14 the Presiding Officer, the Village Manager, or the Village Clerk may  
15 adjourn the meeting until another hour or day unless, by unanimous  
16 agreement, those members present select another time and continue the  
17 meeting to a date certain. The names of the members present and their  
18 action at such meeting shall be recorded in the minutes by the Village Clerk.

19  
20 (m) RULES OF DECORUM.

21 (1) Preservation of Order. Meetings of a Commission as herein defined shall  
22 be conducted in an orderly manner to ensure that the public has a full  
23 opportunity to be heard and that the deliberative process of the Commission  
24 is conducted as efficiently as possible. The Presiding Officer shall be  
25 responsible for maintaining the order and decorum of meetings.

26 (2) Commission Members. The members of a Commission as herein defined  
27 shall preserve order and decorum, and a member shall not by conversation  
28 or other means delay or interrupt the Commission's proceedings, including  
29 delaying or interrupting any person who is speaking who has been  
30 recognized by the Presiding Officer.

31 (3) Village Staff Members. Employees of the Village shall observe the same  
32 rules of order and decorum as those that apply to members of the  
33 Commission.

34 (4) Persons Addressing the Commission. Members of the public are afforded  
35 the opportunity to address the Commission on any item of interest to the  
36 public that is within the subject matter jurisdiction of the Commission.  
37 Members of the public must address members of the Village Commission  
38 and Village Officials by their respective titles, and not by first name. Each  
39 person who addresses the Commission shall do so in an orderly manner and  
40 shall not make personal, impertinent, slanderous, or profane remarks to any

1 member of the Commission, staff, or general public that disrupt, disturb, or  
2 otherwise impede the orderly conduct of any meeting of the Commission.

3 Any person who makes such remarks; or who utters loud, threatening,  
4 personal, or abusive language; or engages in any other disorderly conduct  
5 that disrupts, disturbs, or otherwise impedes the orderly conduct of any  
6 meeting of the Commission, including, but not limited to, addressing the  
7 Commission without being recognized, repetitiously addressing the same  
8 subject, or failing to relinquish the podium when requested to do so, shall,  
9 at the discretion of the Presiding Officer, be barred from further audience  
10 before the Commission during that meeting.

11 (5) Members of the Audience. No person in the audience at a Commission  
12 meeting shall engage in disorderly or boisterous conduct, including the  
13 utterance of loud, threatening, or abusive language; whistling; stamping of  
14 feet; or other acts which disturb, disrupt, or otherwise impede the orderly  
15 conduct of any meeting of the Commission. Any person who conducts  
16 himself or herself in the aforementioned manner shall, at the discretion of  
17 the Presiding Officer, be barred from further audience before the  
18 Commission during that meeting.

19 (6) Addressing the Village Commission. Any person wishing to address the  
20 Commission regarding an item which is on the meeting agenda or is  
21 otherwise within the subject matter jurisdiction of the Commission may  
22 submit a request on the form provided, or he or she may seek recognition  
23 by the Presiding Officer during discussion of any such item. Persons  
24 wishing to discuss a non-agenda item may seek recognition by the Presiding  
25 Officer during the Public Comment portion of the meeting. No person shall  
26 address the Commission without first being recognized by the Presiding  
27 Officer.

28 The following procedures shall be observed by persons addressing the  
29 Commission:

30 (A) Each person shall speak from the podium provided for the use of the  
31 public.

32 (B) Each person shall limit his or her remarks to three (3) minutes.

33 (7) Enforcement of Decorum. The rules of decorum set forth above shall be  
34 enforced in the following manner:

35 (A) Warning. The Presiding Officer shall request that a person who is  
36 violating the rules of decorum conform his or her behavior to these  
37 rules.

1 (B) Instructed to Leave Meeting. If, after receiving a warning from the  
2 Presiding Officer, a person persists in disturbing the meeting, the  
3 Presiding Officer shall order the individual to leave the meeting.

4 (C) Removal. If such person does not remove himself or herself from the  
5 meeting, the Presiding Officer may order any law enforcement  
6 officer who is on duty at the meeting as Sergeant-at-Arms to remove  
7 that person from the meeting.

8 Any law enforcement officer who is serving as Sergeant-at-arms  
9 may carry out orders and instructions given by the Presiding Officer  
10 for the purpose of maintaining order and decorum at the meeting.  
11 Upon instruction of the Presiding Officer, the Sergeant-at-Arms  
12 may remove any person(s) who is (are) disturbing the proceedings  
13 of the Commission in violation of these rules from the meeting.

14 (D) Resisting Removal. Any person who resists removal by the  
15 Sergeant-at-Arms may be charged with a violation of this section.

16 (E) Commission Override; Reinstatement. The Commission may, by a  
17 simple majority vote, override the Presiding Officer's removal  
18 determination and reinstate an individual's ability to attend any  
19 meeting or public workshop.

20 (F) Citations and Arrests. Nothing in this section precludes the  
21 Sergeant-at-Arms from utilizing their authority as a sworn law  
22 enforcement officer to cite or arrest any individual for violating the  
23 law, including, but not limited to, breach of the peace, disorderly  
24 conduct, disorderly intoxication, or trespass after warning.

25 (G) Clearing the Meeting Site. In the event that any meeting is willfully  
26 interrupted by a group or groups of persons so as to render the  
27 orderly conduct of such meeting unfeasible and order cannot be  
28 restored by the removal of individuals who are willfully interrupting  
29 the meeting, the Presiding Officer may order the room cleared and  
30 continue in session. The Presiding Officer may subsequently  
31 readmit individuals not believed to be responsible for creating the  
32 disturbance into the meeting. If a meeting of the Commission is  
33 disturbed or disrupted in such a manner as to make unfeasible or  
34 improbable the restoration of order, the meeting may be adjourned  
35 or continued at the discretion of the Presiding Officer, and any  
36 remaining business of the Commission may be considered at the  
37 next scheduled Commission meeting.

38 (8) Rules for recording meetings. As permitted by Florida Statutes, members of  
39 the public are permitted to record any open and public Commission

1 meeting. In order to provide for the recording of such meetings by members  
2 of the public, the Village has developed the following guidelines:

3 (A) The recording procedure must not disrupt, disturb, or otherwise  
4 impede the conduct of the meeting. A disruption or disturbance of  
5 the orderly conduct of the meeting can include, but is not limited to,  
6 the following:

7 1. Obstructing the view of audience/staff members.

8 2. Creating noise that keeps audience/staff members from  
9 hearing the proceedings.

10 3. Treating potential interviewees, and/or conducting  
11 interviews, in a belligerent manner.

12 4. Interfering with the Village's audio and/or recording  
13 equipment for the meeting. This includes, but is not limited  
14 to, the use of equipment which creates beeping, radio noise,  
15 or static interference "white noise" with Village equipment  
16 during the pendency of a Commission meeting.

17 (B) Placement of video recording equipment/crew:

18 1. When recording is taking place in the meeting chambers,  
19 video cameras, tripods, and/or crew shall be located in the  
20 back corner of the room and shall be situated so the public is  
21 able to safely walk around the room's aisles and perimeter  
22 without being impeded by such video cameras, tripods,  
23 and/or crew.

24 2. When recording is taking place at a meeting of a  
25 Commission herein defined at a location other than the  
26 Village Council Chambers, video cameras, tripods, and/or  
27 crew shall be situated so neither the view nor the circulation  
28 of the audience or staff is impeded.

29 3. All audio/electrical cords must be securely taped or covered  
30 with a mat.

31 4. No recording devices may be placed on the dais, podium, or  
32 other Village-owned apparatus.

33 (C) Village staff is in charge of enforcing the recording guidelines at the  
34 meeting site. The Presiding Officer may instruct the Sergeant-at-  
35 arms to unplug or otherwise remove any equipment which fails to  
36 conform with the rules provided herein.

1           (n) PUBLIC PARTICIPATION.

2           (1) Persons authorized on the dais; approaching dais prohibited. No person,  
3           except Village officers or their representatives, shall be permitted on the  
4           dais unless authorized by the Presiding Officer or a majority vote of the  
5           Commission. Unauthorized individuals approaching the dais is strictly  
6           prohibited and may result in removal from the Commission meeting.

7           (2) Registration of speakers for public hearing items.

8           (A) The Village Clerk shall prepare appropriate sign-in sheets for public  
9           hearing items which should indicate the speaker's name, the public  
10           hearing item on which he or she is speaking, and whether he or she  
11           is speaking in favor of or against the proposed item.

12           (B) On the day of the meeting or workshop, a person desiring to speak  
13           shall sign in with the Village Clerk, at least five (5) minutes prior to  
14           the commencement of the discussion on the item, at a registration  
15           table in the meeting chambers.

16           (C) Failure to comply with the registration provisions of this rule shall  
17           prohibit a person from speaking on any public hearing item for  
18           which he or she is not properly signed-in.

19           (3) Addressing the Commission, manner, time for public hearing items. Each  
20           person, other than salaried members of the Village staff, who addresses the  
21           Commission or a committee shall step up to a podium and shall give the  
22           following information in an audible tone of voice for the minutes:

23           (A) Name;

24           (B) Address;

25           (C) Whether the person speaks on his or her own behalf, a group of  
26           persons, or a third party; or if the person represents an organization;  
27           and whether the view expressed by the speaker represents an  
28           established policy of the organization approved by the board or  
29           governing council;

30           (D) Compensation, if any, including in-kind compensation;

31           (E) Whether the person or any immediate family member has a personal  
32           financial interest in the pending matter, other than as set forth in (d).

33           Unless further time is granted by the Commission or committee, the  
34           statement on a public hearing item shall be limited to three (3) minutes. All  
35           remarks shall be addressed to the Commission or committee as a body and  
36           not to any member thereof. No person, other than Commissioners and the  
37           person having the floor, shall be permitted to enter into any discussion,  
38           either directly or through a member of the Commission, without the  
39           permission of the Presiding Officer. No question shall be asked directly to  
40           a Commissioner except through the Presiding Officer.

1           (o)     RULES OF DEBATE.

- 2           (1)     Questions under consideration. When a motion is presented and seconded,  
3           it is under consideration and no other motion shall be received thereafter,  
4           except to adjourn, to lay on the table, to postpone, or to amend until the  
5           question is decided. These motions shall have preference in the order in  
6           which they are mentioned and the first two (2) shall be decided without  
7           debate. Final action upon a pending motion may be deferred until a date  
8           certain by a simple majority vote of the Commission members present.
- 9           (2)     Getting the floor, improper references to be avoided. Every member  
10          desiring to speak for any purpose shall address the Presiding Officer, and  
11          upon recognition, shall be confined to the question under debate, avoiding  
12          all personalities and indecorous language.
- 13          (3)     Interruption; call to order; appeal a ruling of the chair. A Commission  
14          member, once recognized, shall not be interrupted when speaking unless it  
15          be a call to order or as herein otherwise provided. Should a member be  
16          called to order, the member shall cease speaking until the question of order  
17          be determined by the Presiding Officer, and if in order the member shall be  
18          permitted to proceed. Any member may appeal to the Commission from the  
19          decision of the Presiding Officer upon a question of order, when, without  
20          debate, the Presiding Officer shall submit to the Commission the question,  
21          "Shall the decision of the Chair be sustained?" and the Commission shall  
22          decide by a majority vote.
- 23          (4)     Privilege of closing debate. The Commissioner sponsoring or moving the  
24          adoption of an ordinance, resolution or motion shall have the privilege of  
25          closing the debate.
- 26          (5)     Method of voting. Voting shall be by roll call, voice vote, or paper ballot.  
27          Upon every roll call vote the Village Clerk shall call names of the  
28          Commissioners alphabetically by title and surname. The Village Clerk shall  
29          call the roll, tabulate the votes, and announce the results. The vote upon  
30          every resolution and ordinance shall be taken by roll call. Board  
31          appointments may be made by paper ballot which clearly identify the  
32          Commissioner voting, but must be announced and confirmed thereafter by  
33          roll call. The Village Clerk must incorporate copies of the paper ballots in  
34          the minutes from the meeting.
- 35          (6)     Explanation of vote; conflicts of interest. Upon any roll call, there shall be  
36          no discussion by any commissioner voting, and the commissioner shall vote  
37          yes or no. A commissioner shall have the privilege of filing with the clerk a  
38          written explanation of his or her vote.
- 39          Any commissioner with a conflict of interest on a particular matter shall:  
40          (1) announce publicly at the meeting the nature of the conflict before the  
41          matter is heard; (2) absent himself or herself from the commission chambers  
42          during that portion of the meeting when the matter is considered; and (3)  
43          file a written disclosure of the nature of the conflict with the Village Clerk

1 consistent with state and local ethics rules. The filing of the State of Florida  
2 form prescribed for written disclosure of a voting conflict shall constitute  
3 compliance with this subsection. Any such Commissioner who does not  
4 leave the chambers shall be deemed absent for purposes of constituting a  
5 quorum, counting the vote, or for any other purpose.

6 (7) *Tie votes.* Whenever action cannot be taken because the vote of the  
7 commissioners has resulted in a tie, and no other available motion on an  
8 item is made and approved before the next item is called for consideration  
9 or before a recess or adjournment is called, whichever occurs first, the item  
10 shall be carried over to the next regularly scheduled meeting for the  
11 consideration and Commission vote.

12 (8) *Vote change.* Any Commissioner may change his or her vote before the next  
13 item is called for consideration, or before a recess or adjournment is called  
14 whichever occurs first, but not thereafter.

15 (9) *No motion or second.* If an agenda item fails to receive a motion or second,  
16 it shall be removed from the agenda and may only be reintroduced thereafter  
17 in accordance with the renewal provisions of this section.

18 (10) *Item Reconsideration.* An action of the commission may be reconsidered  
19 only at the same meeting at which the action was taken or at the next regular  
20 meeting thereafter. A motion to reconsider may be made only by a  
21 Commissioner who voted on the prevailing side of the question and must  
22 be concurred in by a majority of those present at the meeting. A motion to  
23 reconsider an item resulting in a tie vote is not in order, and no such motion  
24 shall be reconsidered. A motion to reconsider shall not be considered unless  
25 at least the same number of commissioners is present as participated in the  
26 original vote, or upon affirmative supermajority vote of those  
27 commissioners present. Adoption of a motion to reconsider shall rescind the  
28 action reconsidered.

29 (11) *Renewal.* Once action is taken on a proposed ordinance or resolution,  
30 neither the same matter nor its repeal or rescission may be brought before  
31 the Commission again during the six (6) month period following the said  
32 action, unless application for renewal is presented and approved by a  
33 supermajority vote of the Commissioners present. An application for  
34 renewal must be approved during a regular commission meeting prior to  
35 that item being placed on a meeting agenda.

36 (12) *Expiration of postponed items.* Once an item before the Board is postponed  
37 indefinitely, and no action is taken by the Board on such item for a period  
38 of six (6) months following the latest postponement, such item shall be  
39 deemed withdrawn. Consideration of the matter covered under the item  
40 shall require the introduction of a new item.

41 (13) *Recess.* Any member of the Commission may move for a recess during a  
42 pending meeting. The Presiding Officer has the authority to unilaterally

1 declare a recess in the interests of security, safety, and/or order during  
2 Commission meetings.

3 (14) Adjournment. Any member of the Commission may move to adjourn a  
4 meeting. A motion to adjourn will be approved if passed by a simply  
5 majority vote of the Commission members present. A motion to adjourn  
6 shall always be in order and decided without debate. The Presiding Officer  
7 has the authority to unilaterally adjourn a meeting in the interests of  
8 security, safety, and/or order.

9 (15) Suspension of the rules. No rule of procedure provided herein shall be  
10 suspended except by an affirmative supermajority vote of the  
11 Commissioner members present.

12  
13 (p) CENSURE.

14  
15 (1) Censure defined. Censure is a formal act by the Commission, as a body,  
16 which publicly condemns and reprimands an individual or entity whose  
17 action runs counter to the Village’s acceptable standards for behavior,  
18 civility, order, or decorum.

19  
20 (2) Authority to censure. The Village Commission may, as a body, censure any  
21 individual or entity by a unanimous vote of the voting members of the  
22 Commission at a properly noticed public hearing. Any Commission censure  
23 must be memorialized in a signed written resolution detailing the conduct  
24 at issue and basis for the Commission decision to censure.

25  
26 (3) Public hearing required. Any proposal to censure is due to the Village  
27 Clerk in writing at least thirty (30) calendar days prior to a regularly  
28 scheduled Commission meeting. Upon receipt, the Village Clerk shall  
29 immediately provide written notice to the potential respondent, and notify  
30 the respondent of their ability to provide a written response to the  
31 Commission in advance of the public hearing. Written responses are due to  
32 the Village Clerk at least five (5) business days prior to the public hearing  
33 on the censure proposal.

34  
35 (4) Co-sponsorship required. A proposal to censure an individual or entity  
36 must be co-sponsored by a second Commission member during the agenda  
37 approval phase of a public meeting. In the event a proposal to censure does  
38 not receive a co-sponsorship from a second Commission member, the  
39 censure proposal must be removed from the agenda for the meeting and  
40 shall be deemed a failed agenda item.

41  
42 (5) No authority to unilaterally censure. No individual Commission member  
43 has the authority to unilaterally censure or otherwise publicly reprimand any  
44 individual or entity during a Commission meeting, or at any time  
45 whatsoever, on behalf of the Village of Biscayne Park.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13

Attest:

\_\_\_\_\_  
Roseann Prado, Village Clerk

Approved as to form:

\_\_\_\_\_  
Rebecca Rodriguez, Village Attorney



**VILLAGE OF BISCAYNE PARK  
Village Commission Agenda Report  
REGULAR MEETING**

**Item # 11.a**

---

**TO:** Members of the Biscayne Park Village Commission  
**FROM:** Mayor Tracy Truppmann  
**DATE:** November 5, 2019  
**TITLE:** Discussion on Vacation Rental Concerns within the Village

---

**Background & Rationale**

The Village of Biscayne Park is a desirable and quiet residential community with virtually no commercial development. Residents have voiced concerns regarding short-term vacation rentals within the Village. For example, quite recently a residential property within the Village was rented out as a vacation rental, but was instead used to host a large, disruptive party. It should be recognized that not all vacation rentals have problems that negatively impact the community. I ask my fellow Commissioners to consider developing local regulations to address the problematic aspects of vacation rentals that can arise from these commercial activities, in order to protect the character of our Village. This item **does not** address regulations regarding long-term rentals..

These issues include: excess number of occupants, commercial events (including large parties) in residential zoned areas, excessive noise, parking issues, littering, and other quality of life and property value issues that arise for neighboring properties. Attached is a 2019 Legislative Brief from the Florida League of Cities discussing the issues, challenges, background and legislative history. This Legislative Brief discusses the challenges that pre-empt the Village's ability to freely regulate short-term rentals. For the purposes of discussion, the Commission and residents need the legal framework of what constitutes a vacation rental and consider the other issues that may arise. The section below summarizes the legal definitions of vacation rentals.

**Regulating Vacation Rentals**

Florida Statutes defines a vacation rental as "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." Fla. Stat. § 509.242(1)(c). Miami-Dade County's Code of Ordinances defines "vacation rental" as:

[A]ny dwelling unit or residence, including, but not limited to, any unit or group of units in a condominium, cooperative, or apartment building, that is rented in whole or in part to a transient occupant **for a period of less than 30 days or one calendar month**, whichever is less, or which is advertised or held out to the public as a place that may be rented to a transient occupant, but shall not include a hotel, motel, or bed and breakfast as defined in this code and referenced in the CDMP. For purposes of this section, the term vacation rental is synonymous with the term

short-term residential rental.

Miami-Dade Code § 33.28(b)(5). A state vacation rental dwelling license is required. Fla. Stat. § 509.241(1). A vacation rental dwelling license will be issued for a single-family house, a townhouse, or a unit or group of units in a duplex, triplex, quadruplex, or other dwelling unit that has four or less units collectively.” F.A.C. 61C-1.002(4)(a). ““A local law, ordinance, or regulation **may not prohibit** vacation rentals or regulate the duration or frequency of rental of vacation rentals.”

The use of vacation rentals and the issues that arise need to be addressed expeditiously as the number of these properties will continue to increase. The Village’s police and code enforcement officers desire better local enforcement tools. The legislative rationale for enacting this ordinance is found in the attachment herein in the 2019 Florida League of Cities Brief and sample ordinances from other municipalities. Please note the bills summarized therein did not pass last legislative session, but it highlights the municipal interest in regulating vacation rentals.

### **Recommendations**

1. The Village hold at least one public hearing prior to drafting an ordinance to ensure all stakeholders are heard – neighbors, business owners, and any affected parties.
2. Staff review ordinances from other Florida municipalities and how these smaller residential communities have had success in dealing with issues that arise out of short-term rentals.
3. The Village Attorney and staff narrow the focus of the ordinance to actual issues that the Village is experiencing and review any additional issues arising in neighboring cities to include: excess number of occupants, commercial events including large parties in residential zoned areas, excessive noise, parking issues, and littering.
4. After holding a public hearing, I recommend the Commission direct the Village Attorney to propose draft an ordinance regulating short term rentals in the Village and resolution with proposed changes to the Village’s fee schedule to incorporate the fines for enforcement.

### **Resource Impact**

Attorney research and time to draft the ordinance. Expense of advertising public hearings on the proposed ordinance.

### **Attachment(s)**

1. Florida League of Cities 2019 Legislative Brief on Short Term Rentals
2. Florida Attorney General Opinion 2019-07
3. Applicable Florida Statutes
4. Section 33-28 of the Miami-Dade County Code of Ordinances
5. F.A.C. 61C-1.002(4)(a)
6. Copy of Florida DBPR Vacation Rental Dwelling Application



# 2019 Legislative Issue Briefs



## Short-Term Rentals

### Statement:

The Florida League of Cities SUPPORTS legislation that restores local zoning authority with respect to short-term rental properties, thereby preserving the integrity of Florida's residential neighborhoods and communities. The Florida League of Cities OPPOSES legislation that preempts municipal authority as it relates to the regulation of short-term rental properties.

### Background:

In 2011, the Florida Legislature prohibited cities from regulating short-term vacation rentals. A short-term vacation rental is defined as a property that is rented more than three times a year for less than 30 days at a time. The legislation passed in 2011 included a provision that "grandfathered" any ordinance regulating short-term rentals prior to June 1, 2011. Since that time, a number of cities, both "grandfathered" cities and those that did not have an ordinance in place, have experienced problems with these properties. The effect of the 2011 law is that two separate classes of cities were created respective to short-term rentals, those with Home Rule authority and those without.

In 2014, the Legislature passed SB 356 (Thrasher), which diminished the preemption on short-term rentals. The 2014 law allows local governments to adopt ordinances specific to these rentals so that they can address some of the noise, parking, trash and life-safety issues created by their proliferation in residential neighborhoods. Unfortunately, SB 356 left in place existing statutory language stating that cities cannot "prohibit" short-term rentals or regulate the duration or frequency of the rental.

Those cities fortunate enough to have had an ordinance in place prior to the 2011 preemption are still allowed to regulate short-term rentals, but the question remains whether these ordinances will continue to be valid if amended. Some city attorneys believe these ordinances are "frozen" and any future amendments would cause a loss of the "grandfather." The problem with this is twofold. First, with the rise of popular rental websites like Vacation Rental by Owner (VRBO) and AirBnB making it easier to advertise and rent these properties, the number of properties used as short-term rentals in Florida has exponentially increased in the last four years. Second, as a result of this enormous growth in the rental market, the scope of the problem has changed and ordinances adopted before 2011 may no longer be effective.

It is important to note that many of Florida's larger cities (with a larger professional staff) fell into the grandfathered category. They have retained the ability to regulate these properties through zoning and may have duration and frequency requirements. Some of these cities may want to amend their ordinances to adjust to a changing problem. They are reluctant to do so out of fear of losing their existing ordinance and with it their Home Rule authority relating to short-term rentals. Recognizing that the ordinances on the books are no longer effective, cities want the ability to come up with solutions that work for their respective community, but because of the potential loss of the "grandfather," they are unable to do so. It is important to note that any potential amendments to existing ordinances would be vetted through numerous public hearings that allow neighboring

**Contact:** Casey Cook, Senior Legislative Advocate – 850-701-3609 – [ccook@flcities.com](mailto:ccook@flcities.com)

homeowners, short-term rental owners, property managers and local businesses to weigh in on proposed legislation.

Cities without short-term rental regulations in place prior to June 1, 2011, have had their zoning authority stripped and are now seeing these rentals completely overtaking residential neighborhoods. Long-time residents are moving out as a result, and the residential character of traditional neighborhoods is slowly being destroyed.

The impacts of problematic short-term rentals on neighboring residents are felt in a number of ways:

#### The Hotel Next Door – Commercial Activity in Residential Neighborhoods

Houses that sleep 26 people are now present in what were once traditional neighborhoods. Because of the inability to regulate the duration of a renter's stay, these houses could experience weekly, daily or even hourly turnover. Obviously, the constant turnover of renters creates a number of issues for cities and neighboring property owners. Prior to the preemption, local governments were able to regulate this activity through zoning. Short-term rentals have become increasingly popular in the last five years. Because a city cannot "prohibit" these properties, they are powerless to exclude them from residential neighborhoods. As a result, investors, many of whom are located out of state or even in a different country, have purchased or built single-family homes with the sole intent of turning them into short-term rentals.

Cities use zoning as a tool to prepare for their future growth and also use it to control where commercial and residential properties are located. Hotels have different infrastructure needs than single-family residential properties. As residential neighborhoods are developed, the infrastructure installed is designed for the future use of the properties. Many neighborhoods have infrastructure in place with capacity for up to eight people per house. Now there are houses in these very same neighborhoods that sleep more people than the number originally planned for, placing a significant strain on existing infrastructure. Commercial properties like bars, hotels and restaurants typically need more parking than a single-family property, as well as have different operating hours and experience greater noise levels. The current law removes important land use and zoning tools that will impact how a city plans for future growth and levels of service.

#### Noise Complaints

In areas where short-term rentals are situated, many neighboring residents complain of the noise generated by the vacationing renters next door. When people go on vacation, often their behavior changes. They may stay awake later, consume more alcoholic beverages throughout the day, or participate in recreational activities that they would not participate in while at their own homes, such as swimming at midnight with music blaring. For those homes located near water, a lake or the ocean, it is important to note that sound travels easily over water – and residents located hundreds of yards away may be the ones calling and complaining to the police and their local elected officials.

Some cities have noise ordinances, but these have proved problematic to enforce. One such example is Lighthouse Point. Its ordinance requires sustained noise over a certain decibel threshold for 10 minutes. Many times after the police arrive at a residence, the noise dies down. These renters may leave the next day with new ones replacing them. The new renters are often unaware of the noise ordinance or past complaints and may cause the same problems. The out-of-state property owner may not even be aware of the problems created by their renters and with the constant turnover. The

**Contact:** Casey Cook, Senior Legislative Advocate – 850-701-3609 – [ccook@flcities.com](mailto:ccook@flcities.com)

problem ends as one renter leaves and begins again as new renters arrive. This causes a significant drain on law enforcement resources. When law enforcement officers are called to respond to noise complaints, one less officer is on the street either preventing or solving crimes.

### Parking

Many short-term rentals are located in single-family neighborhoods. In most cases, the driveway was built to accommodate two or three vehicles. When you now have a renovated house that acts as a small hotel, there will be more than three cars needed to get these renters to the property. This leads to cars that are parked on the street, making it difficult for emergency vehicles to respond to emergencies and causes increased response times in these neighborhoods. Cities have begun to adopt ordinances creating parking standards for short-term rental properties. Unfortunately, these ordinances only solve the parking issue but fail to address any of the other issues created by this commercial activity in residential areas.

### Revenue Issues

As stated earlier, a property rented more than three times a year for less than 30 days at a time meets the vacation rental definition and should be licensed by the state. The Department of Business and Professional Regulation (DBPR) is tasked with investigating unlicensed vacation rentals but lacks the resources needed to fully investigate every complaint. Unlicensed vacation rentals could be costing Florida millions of dollars each year from lost licensing revenue.

Licensed short-term vacation rentals and hotels are also required to charge a sales tax to renters and then remit this back to the state. Many licensed and unlicensed vacation rentals are not doing this. The Florida Department of Revenue (DOR) has limited resources and cannot adequately monitor these transactions, costing the state millions of dollars in lost revenue. Similarly, short-term rental owners in some counties are required to collect and remit the tourist development tax to the state. DOR is often unable to track down the vacation rental owners who are not paying the tourist development tax.

The Legislature began the conversation on short-term rentals in 2014, and the Florida League of Cities supported both HB 307 (Hutson) and SB 356 (Thrasher). The bills were a step in the right direction, but they only partially restored Home Rule to Florida's cities. Cities are still prevented from regulating the duration and frequency of the rentals, and local zoning does not apply to these properties. Without the ability to regulate these key areas, local governments will not be able to adequately address the problems associated with these properties.

### **Status:**

There have been several short-term rental bills filed for the 2019 legislative session.

### **SB 824 (Diaz) and HB 987 (J. Grant) – Oppose**

- Preempt to the state the regulation of vacation rentals
- Any ordinances (noise, parking, trash, etc.), must apply to all residential properties, regardless of how the property is being used
- Local governments cannot prohibit rentals (not just STRs), impose occupancy limits on rental properties, or require inspections or licensing of rentals (specific to STRs)
- Create a process where city must prove by clear and convincing evidence that their ordinance or regulation complies with this section

**Contact:** Casey Cook, Senior Legislative Advocate – 850-701-3609 – [ccook@flcities.com](mailto:ccook@flcities.com)

- **Remove the grandfather clause; also potentially jeopardizes HOA restrictions**
- Require applicants for STR license to provide name, address, phone number, and email to Department of Business and Professional Regulation (DBPR) who must make this available to the public on the division's website.

### **SB 812 (Simmons) and SB 814 (Simmons) – Support**

- Requires short-term rental (STR) registration to be displayed in the establishment and the registration number to be included in any listing or advertisement
- Defines “commercial vacation rental”: five or more units under common ownership
- Defines “hosting platform”
- Clarifies that rental units, in whole or in part, and advertised for rental periods for less than 30 days, are classified as STRs
- Requires the Department of Business and Professional Regulation (DBPR) to inspect commercial vacation rentals at least biannually
- Requires that non-commercial STRs must be made available for inspection upon request
- Requires that local governments treat all residential properties the same, regardless of use...but there's an exception...In single family residences where the owner is not occupying a portion of the property where the rental activity is taking place (home sharing), local governments can adopt specific regulations to the rental
- Requires that STR owners give the city a copy of their state license and the owner's emergency contact information. Cities can't charge for this information.
- Says that grandfathered cities can amend their ordinances if it's the changes are “less restrictive”
- Says that DBPR can refuse to issue or renew, or suspend or revoke, the license of any public lodging establishment that is the subject of a final order from a local government directing the establishment to cease operations due to a violation of a local ordinance
- Requires any advertisements to list the license number, and the ad must also include the physical address of the property
- Adds several new requirements on hosting platforms including a prohibition on facilitating a rental if the property has not been licensed by DBPR
- Requires the hosting platform to maintain rental records of every property advertised on the platform and requires DBPR to audit at least annually, with penalties for noncompliance or failed audits.

### **SB 1196 (Mayfield) – Support**

- Defines “hosting platform,” and provides for more accountability of the platforms
- Requires Department of Business and Professional Regulation (DBPR) to collect information relating to the bookings of each short-term rental and share this information with cities upon request
- Expands definition of transient public lodging establishment to include “group of units in a dwelling”
- Requires a license to be displayed inside the STR and the license number to be included in all advertising
- Prohibits platform from facilitating a booking transaction unless the operator has consented to the disclosure of the required information

**Contact:** Casey Cook, Senior Legislative Advocate – 850-701-3609 – [ccook@flcities.com](mailto:ccook@flcities.com)

- Requires hosting platform to remove noncompliant ads within three business days of DBPR's notification
- Requires DBPR to revoke, refuse to issue, or renew a short-term rental license when the subject property violates the terms of an applicable lease or property restriction OR the agency determines that the operation of a short-term rental violates a local law, ordinance or regulation.

**SB 1720** (Lee) and **HB 1383** (Grant) would significantly amend the Bert J. Harris Act. These bills could have a serious impact on local government operations and expose cities and counties to substantial liability, especially for those who receive a flurry of Harris Act claims relating to vacation rental ordinances. For more information on this set of bills see FLC's Issue Brief on Private Property Rights "Bert Harris Act".

**Revised:** 3/21/2019

# Florida Attorney General Advisory Legal Opinion

**Number: AGO 2019-07**

**Date: August 16, 2019**

**Subject: Vacation rentals, municipalities, grandfather provision**

---

Jennifer C. Rey, Esq.  
The Hogan Law Firm, as City Attorney  
20 South Broad Street  
Brooksville, Florida 34601

RE: VACATION RENTALS – MUNICIPALITIES – LOCAL GOVERNMENT – preserving grandfathered status under preemption provision when changing zoning district. § 509.032(7)(b), Fla. Stat.

Dear Ms. Rey:

This office has received your letter on behalf of the of the Crystal River City Council requesting an opinion regarding the effect of an amendment to the City's zoning laws in the area of vacation rentals.

May a City change its table of permitted uses for zoning districts to allow vacation rentals within districts in which they were not allowed under the City's pre-2011 ordinance, and still preserve the "grandfathered" status of its pre-2011 ordinance under section 509.032(7)(b), Florida Statutes (2018)?

In sum:

Amending an ordinance that was enacted prior to June 1, 2011, will not invalidate the grandfathering protection for those provisions that are reenacted, but new provisions would be preempted if they revise such language in a manner that would regulate the duration or frequency of rental of vacation rentals, even when such regulation would be considered "less restrictive" than the prior local law.

You indicate that the table of permitted uses in the City's Land Development Code enacted in 2005 permits resort housing units only in the City's Commercial Waterfront zoning district.[1] "Resort housing units" are defined in section 1.07.00 as dwelling units that are made available for occupancy for less than three months. Section 5.05.13 describes the permitted use as follows:

- A. Resort housing units are permissible in the CW zoning district, subject to the district standards and the supplemental standards set forth below.
- B. Nightly rentals or rentals of less than a one-week period are not permitted.
- C. Density for resort housing units shall not exceed twelve (12) units per acre.
- D. Resort housing units may be managed by the individual unit owner or by a property management company. An occupational license is required for the manager, whether an individual owner with a single unit, or a property management company.

**Section 509.032(7)(b), Florida Statutes, provides:**

**A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.**

**Section 509.032(7)(b) allows the City to regulate vacation rentals so long as such regulation does not prohibit them or limit the duration or frequency of rental.[2] You ask,**

however, whether enactment of a less restrictive ordinance that would permit vacation rentals where they are now prohibited, by allowing resort housing units in other zoning districts, would eliminate the grandfathered protection of remaining ordinances that deal with vacation rentals.

When a law is amended, provisions of the original law that are essentially and materially unchanged are considered to be a continuation of the original law. “The provisions of the original act or section reenacted by amendment are the law since they were first enacted, and provisions introduced by the amendment are considered to have been enacted at the time the amendment took effect. Thus, rights and liabilities accrued under the original act which are reenacted are not affected by amendment.”[3] As stated by the Florida Supreme Court, this general rule “sometimes becomes important, where rights had accrued before the revision or amendment took place.”[4]

[W]here a statute has been repealed and substantially re-enacted by a statute which contains additions to or changes in the original statute, the re-enacted provisions are deemed to have been in operation continuously from the original enactment whereas the additions or changes are treated as amendments effective from the time the new statute goes into effect.[5]

This principle was operative in a recent case involving vacation rentals, *City of Miami v. Airbnb*. In the course of deciding the case, the Third District observed that a 2017 resolution interpreting zoning ordinances that prohibited short-term rentals in a suburban/residential zone was not preempted, because it was “identical in its material provisions” to the zoning code the City had enacted in 2009. In contrast, “to the extent the City’s 2015 Zoning Interpretation goes beyond the restrictions in [the 2009 ordinance], the Interpretation is preempted under section 509.032(7)(b).”[6]

Provisions in your amended ordinances that are essentially unchanged from the prior ordinances are deemed to have been in operation since 2005 and, thus, continue to be exempt from the preemption provision of section 509.032(7)(b), Florida Statutes. New provisions that act to prohibit vacation rentals that were not previously prohibited, or that “regulate”[7] the duration and frequency of vacation rentals, even if such provisions are less restrictive than the earlier provisions, are preempted by the statute. Changing the table of permitted uses to reflect that “resort housing units” would also be permitted in other zoning districts would conceivably expand the areas in which vacation rentals could be operated. But the duration and frequency restrictions in section 5.05.13(B), which would then apply to those zoning districts, would “regulate” resort housing units operated as vacation rentals.[8] Because the “resort housing unit” land use classification expressly regulates, and restricts, the duration or frequency of rentals of residential property that could be considered “vacation rentals,” amending the City’s table of permitted uses to permit resort housing units in other zoning districts would violate section 509.032(7)(b).

Sincerely,

Ashley Moody  
Attorney General

[1] Section 2.03.02, Code of Ordinances, City of Crystal River, Florida, Appendix A – Land Development Code.

[2] See Att’y Gen. Op. Fla. 2016-12 (quoting from House of Representatives Final Bill Analysis, CS/CS/CS/HB 883, dated June 28, 2011).

[3] Norman Singer, 1A Sutherland Statutory Construction §22:33 (7th ed. Nov. 2018 update).

[4] Perry v. Consolidated Special Tax School Dist. No 4, 89 Fla. 271, 276, 103 So. 639, 641 (1925) (quoting Cooley's Const. Lim., at 96-97 (7th ed.)). Accord Orange County v. Robinson, 111 Fla. 402, 405, 149 So. 604, 605 (1933).

[5] McKibben v. Mallory, 293 So. 2d 48, 53 (Fla. 1974). Accord Venice HMA, LLC v. Sarasota Cty., 228 So. 3d 76, 83 (Fla. 2017).

[6] City of Miami v. Airbnb, 260 So. 3d 478, 482 (Fla. 3d DCA 2018).

[7] Black's Law Dictionary defines the word "regulate" to mean, in pertinent part: "To control (an activity or process) esp. through the implementation of rules." BLACK'S LAW DICTIONARY (11th ed. 2019).

[8] I note that section 5.05.13(A) of the City's Land Development Code also expressly restricts resort housing units to the CW zoning district.

## The 2019 Florida Statutes

---

Title XXXIII  
REGULATION OF TRADE, COMMERCE, INVESTMENTS,  
AND SOLICITATIONS

Chapter 509  
LODGING AND FOOD SERVICE ESTABLISHMENTS;  
MEMBERSHIP CAMPGROUNDS

[View Entire  
Chapter](#)

### **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.

(d) *Nontransient apartment.*—A nontransient apartment is a building or complex of buildings in which 75 percent or more of the units are available for rent to nontransient tenants.

(e) *Transient apartment.*—A transient apartment is a building or complex of buildings in which more than 25 percent of the units are advertised or held out to the public as available for transient occupancy.

(f) *Bed and breakfast inn.*—A bed and breakfast inn is a family home structure, with no more than 15 sleeping rooms, which has been modified to serve as a transient public lodging establishment, which provides the accommodation and meal services generally offered by a bed and breakfast inn, and which is recognized as a bed and breakfast inn in the community in which it is situated or by the hospitality industry.

(g) *Timeshare project.*—A timeshare project is a timeshare property, as defined in chapter 721, that is located in this state and that is also a transient public lodging establishment.

(2) If 25 percent or more of the units in any public lodging establishment fall within a classification different from the classification under which the establishment is licensed, such establishment shall obtain a separate license for the classification representing the 25 percent or more units which differ from the classification under which the establishment is licensed.

(3) A public lodging establishment may advertise or display signs which advertise a specific classification, if it has received a license which is applicable to the specific classification and it fulfills the requirements of that classification.

*History.*—s. 2, ch. 57-824; s. 2, ch. 61-81; ss. 16, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 19, 39, 42, ch. 79-240; ss. 3, 4, ch. 81-161; ss. 2, 3, ch. 81-318; ss. 26, 51, 52, ch. 90-339; s. 11, ch. 91-40; s. 4, ch. 91-429; s. 9, ch. 93-53; s. 12, ch. 96-384; s. 7, ch. 2008-55; s. 5, ch. 2011-119; s. 2, ch. 2012-165; s. 5, ch. 2014-133.

## The 2019 Florida Statutes

---

[Title XXXIII](#)  
REGULATION OF TRADE, COMMERCE, INVESTMENTS,  
AND SOLICITATIONS

[Chapter 509](#)  
LODGING AND FOOD SERVICE ESTABLISHMENTS;  
MEMBERSHIP CAMPGROUNDS

[View Entire  
Chapter](#)

### 509.032 Duties.—

(1) GENERAL.—The division shall carry out all of the provisions of this chapter and all other applicable laws and rules relating to the inspection or regulation of public lodging establishments and public food service establishments for the purpose of safeguarding the public health, safety, and welfare. The division shall be responsible for ascertaining that an operator licensed under this chapter does not engage in any misleading advertising or unethical practices.

#### (2) INSPECTION OF PREMISES.—

(a) The division has jurisdiction and is responsible for all inspections required by this chapter. The division is responsible for quality assurance. The division shall inspect each licensed public lodging establishment at least biannually, except for transient and nontransient apartments, which shall be inspected at least annually. Each establishment licensed by the division shall be inspected at such other times as the division determines is necessary to ensure the public's health, safety, and welfare. The division shall adopt by rule a risk-based inspection frequency for each licensed public food service establishment. The rule must require at least one, but not more than four, routine inspections that must be performed annually, and may include guidelines that consider the inspection and compliance history of a public food service establishment, the type of food and food preparation, and the type of service. The division shall reassess the inspection frequency of all licensed public food service establishments at least annually. Public lodging units classified as vacation rentals or timeshare projects are not subject to this requirement but shall be made available to the division upon request. If, during the inspection of a public lodging establishment classified for renting to transient or nontransient tenants, an inspector identifies vulnerable adults who appear to be victims of neglect, as defined in s. [415.102](#), or, in the case of a building that is not equipped with automatic sprinkler systems, tenants or clients who may be unable to self-preserve in an emergency, the division shall convene meetings with the following agencies as appropriate to the individual situation: the Department of Health, the Department of Elderly Affairs, the area agency on aging, the local fire marshal, the landlord and affected tenants and clients, and other relevant organizations, to develop a plan that improves the prospects for safety of affected residents and, if necessary, identifies alternative living arrangements such as facilities licensed under part II of chapter 400 or under chapter 429.

(b) For purposes of performing required inspections and the enforcement of this chapter, the division has the right of entry and access to public lodging establishments and public food service establishments at any reasonable time.

(c) Public food service establishment inspections shall be conducted to enforce provisions of this part and to educate, inform, and promote cooperation between the division and the establishment.

(d) The division shall adopt and enforce sanitation rules consistent with law to ensure the protection of the public from food-borne illness in those establishments licensed under this chapter. These rules shall provide the standards and requirements for obtaining, storing, preparing, processing, serving, or displaying food in public food service establishments, approving public food service establishment facility plans, conducting necessary public food service establishment inspections for compliance with sanitation regulations, cooperating and coordinating with the Department of Health in epidemiological investigations, and initiating enforcement actions, and for other such responsibilities deemed necessary by the division. The division may not establish by rule any regulation governing the design, construction, erection, alteration, modification, repair, or demolition of any public lodging or public food service establishment. It is the intent of the Legislature to preempt that function to the Florida Building Commission and the State Fire Marshal through adoption and maintenance of the Florida Building Code and the Florida Fire Prevention Code. The division shall provide technical assistance to the commission in updating the construction standards of the Florida Building Code which govern public lodging and public food service establishments. Further, the division shall enforce the provisions of the Florida Building Code which apply to public lodging and public food service establishments in conducting any inspections authorized by this part. The division, or its agent, shall notify the local firesafety authority or the State Fire Marshal of any readily observable violation of a rule adopted under chapter 633 which relates to public lodging establishments or public food establishments, and the identification of such violation does not require any firesafety inspection certification.

(e)1. Relating to facility plan approvals, the division may establish, by rule, fees for conducting plan reviews and may grant variances from construction standards in hardship cases, which variances may be less restrictive than the provisions specified in this section or the rules adopted under this section. A variance may not be granted pursuant to this section until the division is satisfied that:

- a. The variance shall not adversely affect the health of the public.
- b. No reasonable alternative to the required construction exists.
- c. The hardship was not caused intentionally by the action of the applicant.

2. The division's advisory council shall review applications for variances and recommend agency action. The division shall make arrangements to expedite emergency requests for variances, to ensure that such requests are acted upon within 30 days of receipt.

3. The division shall establish, by rule, a fee for the cost of the variance process. Such fee shall not exceed \$150 for routine variance requests and \$300 for emergency variance requests.

(f) In conducting inspections of establishments licensed under this chapter, the division shall determine if each coin-operated amusement machine that is operated on the premises of a licensed establishment is properly registered with the Department of Revenue. Each month the division shall report to the Department of Revenue the sales tax registration number of the operator of any licensed establishment that has on location a coin-operated amusement machine and that does not have an identifying certificate conspicuously displayed as required by s. [212.05\(1\)\(h\)](#).

(g) In inspecting public food service establishments, the department shall notify each inspected establishment of the availability of the food-recovery brochure developed under s. [595.420](#).

(3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD SERVICE EVENTS.—The division shall:

(a) Prescribe sanitary standards which shall be enforced in public food service establishments.

(b) Inspect public lodging establishments and public food service establishments whenever necessary to respond to an emergency or epidemiological condition.

(c) Administer a public notification process for temporary food service events and distribute educational materials that address safe food storage, preparation, and service procedures.

1. Sponsors of temporary food service events shall notify the division not less than 3 days before the scheduled event of the type of food service proposed, the time and location of the event, a complete list of food service vendors participating in the event, the number of individual food service facilities each vendor will operate at the event, and the identification number of each food service vendor's current license as a public food service establishment or temporary food service event licensee. Notification may be completed orally, by telephone, in person, or in writing. A public food service establishment or food service vendor may not use this notification process to circumvent the license requirements of this chapter.

2. The division shall keep a record of all notifications received for proposed temporary food service events and shall provide appropriate educational materials to the event sponsors and notify the event sponsors of the availability of the food-recovery brochure developed under s. [595.420](#).

3.a. Unless excluded under s. [509.013\(5\)\(b\)](#), a public food service establishment or other food service vendor must obtain one of the following classes of license from the division: an individual license, for a fee of no more than \$105, for each temporary food service event in which it participates; or an annual license, for a fee of no more than \$1,000, that entitles the licensee to participate in an unlimited number of food service events during the license period. The division shall establish license fees, by rule, and may limit the number of food service facilities a licensee may operate at a particular temporary food service event under a single license.

b. Public food service establishments holding current licenses from the division may operate under the regulations of such a license at temporary food service events.

(4) STOP-SALE ORDERS.—The division may stop the sale, and supervise the proper destruction, of any food or food product when the director or the director's designee determines that such food or food product represents a threat to the public safety or welfare. If the operator of a public food service establishment licensed under this chapter has received official notification from a health authority that a food or food product from that establishment has potentially contributed to any instance or outbreak of food-borne illness, the food or food product must be maintained in safe storage in the establishment until the responsible health authority has examined, sampled, seized, or requested destruction of the food or food product.

(5) REPORTS REQUIRED.—The division shall submit annually to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees a report, which shall state, but need not be limited to, the total number of active public lodging and public food service licenses in the state, the total number of inspections of these establishments conducted by the division to ensure the enforcement of sanitary standards, the total number of inspections conducted in response to emergency or epidemiological conditions, the number of violations of each sanitary standard, the total number of inspections conducted to meet the statutorily required number of inspections, and any recommendations for improved inspection procedures. The division shall also keep accurate account of all expenses arising out of the performance of its duties and all fees collected under this chapter. The report shall be submitted by September 30 following the end of the fiscal year.

(6) RULEMAKING AUTHORITY.—The division shall adopt such rules as are necessary to carry out the provisions of this chapter.

**(7) PREEMPTION AUTHORITY.—**

(a) The regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state. This paragraph does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. [553.80](#) and [633.206](#).

**(b) A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.**

(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.

**History.**—ss. 1, 2, 9, ch. 6952, 1915; RGS 212, 213, 2130; s. 2, ch. 9264, 1923; CGL 245, 246, 3359; ss. 3, 4, ch. 16042, 1933; CGL 1936 Supp. 245, 246; s. 9, ch. 26945, 1951; s. 1, ch. 28129, 1953; ss. 1, 8, ch. 29821, 1955; s. 1, ch. 57-389; s. 1, ch. 63-420; ss. 12, 16, 35, ch. 69-106; s. 2, ch. 73-325; s. 135, ch. 73-333; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 39, 42, ch. 79-240; ss. 1, 3, 4, ch. 81-161; ss. 2, 3, ch. 81-318; ss. 3, 51, 52, ch. 90-339; s. 2, ch. 91-40; s. 4, ch. 91-429; s. 22, ch. 92-180; s. 2, ch. 93-53; s. 35, ch. 93-216; s. 19, ch. 94-314; s. 4, ch. 95-416; s. 137, ch. 95-418; s. 3, ch. 96-384; s. 1165, ch. 97-103; s. 1, ch. 98-275; s. 4, ch. 98-283; s. 246, ch. 99-8; s. 47, ch. 2000-141; s. 47, ch. 2000-154; s. 109, ch. 2000-349; s. 34, ch. 2001-186; s. 3, ch. 2001-372; s. 11, ch. 2002-48; s. 1, ch. 2002-299; s. 96, ch. 2006-197; s. 2, ch. 2008-55; s. 3, ch. 2008-134; s. 2, ch. 2011-119; s. 76, ch. 2012-96; s. 1, ch. 2013-147; s. 146, ch. 2013-183; s. 1, ch. 2014-71; s. 2, ch. 2014-133; s. 48, ch. 2014-150; s. 66, ch. 2015-2; s. 1, ch. 2015-143; s. 2, ch. 2016-86.

Select Year:

## The 2019 Florida Statutes

---

Title XXXIII  
REGULATION OF TRADE, COMMERCE, INVESTMENTS,  
AND SOLICITATIONS

Chapter 509  
LODGING AND FOOD SERVICE ESTABLISHMENTS;  
MEMBERSHIP CAMPGROUNDS

[View Entire  
Chapter](#)

**509.271** Prerequisite for issuance of municipal or county occupational license.—**A municipality or county may not issue an occupational license to any business coming under the provisions of this chapter until a license has been procured for such business from the division.**

History.—s. 49, ch. 16042, 1933; CGL 1936 Supp. 3355(1); s. 7, ch. 29821, 1955; ss. 16, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 22, 39, 42, ch. 79-240; ss. 3, 4, ch. 81-161; ss. 2, 3, ch. 81-318; ss. 29, 51, 52, ch. 90-339; s. 4, ch. 91-429.

Note.—Former s. 511.04.

## The 2019 Florida Statutes

---

Title XXXIII  
REGULATION OF TRADE, COMMERCE, INVESTMENTS,  
AND SOLICITATIONS

Chapter 509  
LODGING AND FOOD SERVICE ESTABLISHMENTS;  
MEMBERSHIP CAMPGROUNDS

[View Entire  
Chapter](#)

### **509.241 Licenses required; exceptions.—**

(1) **LICENSES; ANNUAL RENEWALS.**—Each public lodging establishment and public food service establishment shall obtain a license from the division. Such license may not be transferred from one place or individual to another. It shall be a misdemeanor of the second degree, punishable as provided in s. [775.082](#) or s. [775.083](#), for such an establishment to operate without a license. Local law enforcement shall provide immediate assistance in pursuing an illegally operating establishment. The division may refuse a license, or a renewal thereof, to any establishment that is not constructed and maintained in accordance with law and with the rules of the division. The division may refuse to issue a license, or a renewal thereof, to any establishment an operator of which, within the preceding 5 years, has been adjudicated guilty of, or has forfeited a bond when charged with, any crime reflecting on professional character, including soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or illegally dealing in controlled substances as defined in chapter 893, whether in this state or in any other jurisdiction within the United States, or has had a license denied, revoked, or suspended pursuant to s. [429.14](#). Licenses shall be renewed annually, and the division shall adopt a rule establishing a staggered schedule for license renewals. If any license expires while administrative charges are pending against the license, the proceedings against the license shall continue to conclusion as if the license were still in effect.

(2) **APPLICATION FOR LICENSE.**—**Each person who plans to open a public lodging establishment or a public food service establishment shall apply for and receive a license from the division prior to the commencement of operation.** A condominium association, as defined in s. [718.103](#), which does not own any units classified as vacation rentals or timeshare projects under s. [509.242](#)(1)(c) or (g) is not required to apply for or receive a public lodging establishment license.

(3) **DISPLAY OF LICENSE.**—Any license issued by the division shall be conspicuously displayed in the office or lobby of the licensed establishment. Public food service establishments which offer catering services shall display their license number on all advertising for catering services.

**History.**—ss. 3-5, 8, ch. 6952, 1915; RGS 2124-2126, 2129; ss. 3, 4, ch. 9264, 1923; s. 6, ch. 12053, 1927; CGL 3353-3355, 3358; s. 1, ch. 13659, 1929; ss. 6-8, 13, ch. 16042, 1933; CGL 1936 Supp. 3353, 3354; s. 1, ch. 23930, 1947; ss. 5, 6, ch. 29821, 1955; s. 1, ch. 29820, 1955; s. 9, ch. 57-389; s. 1, ch. 57-824; s. 1, ch. 61-81; s. 1, ch. 67-507; ss. 16, 35, ch. 69-106; s. 4, ch. 70-281; s. 480, ch. 71-136; s. 6, ch. 71-157; s. 19, ch. 73-325; s. 20, ch. 75-233; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 17, ch. 78-336; s. 1, ch. 78-343; ss. 18, 20, 39, 42, ch. 79-240; ss. 3, 4, ch. 81-161; s. 389, ch. 81-259; ss. 2, 3, ch. 81-318; s. 4, ch. 86-174; s. 23, ch. 89-294; ss. 25, 51, 52, ch. 90-339; s. 10, ch. 91-40; s. 4, ch. 91-429; s. 97, ch. 2006-197; s. 4, ch. 2011-119; s. 4, ch. 2014-133.

**Note.**—Former ss. 511.01-511.03, 511.10.

Select Year:

## The 2019 Florida Statutes

---

[Title XXXIII](#)

REGULATION OF TRADE, COMMERCE, INVESTMENTS,  
AND SOLICITATIONS

[Chapter 509](#)

LODGING AND FOOD SERVICE ESTABLISHMENTS;  
MEMBERSHIP CAMPGROUNDS

[View Entire  
Chapter](#)

**509.285** Enforcement; city and county officers to assist.—Any state or county attorney, sheriff, police officer, and any other appropriate municipal and county official shall, upon request, assist the division or any of its agents in the enforcement of this chapter.

History.—ss. 31, 52, ch. 90-339; s. 4, ch. 91-429.

## The 2019 Florida Statutes

---

Title XXXIII  
REGULATION OF TRADE, COMMERCE, INVESTMENTS,  
AND SOLICITATIONS

Chapter 509  
LODGING AND FOOD SERVICE ESTABLISHMENTS;  
MEMBERSHIP CAMPGROUNDS

[View Entire  
Chapter](#)

**509.013 Definitions.**—As used in this chapter, the term:

- (1) “Division” means the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.
- (2) “Operator” means the owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of a public lodging establishment or public food service establishment.
- (3) “Guest” means any patron, customer, tenant, lodger, boarder, or occupant of a public lodging establishment or public food service establishment.
- (4)(a) “Public lodging establishment” includes a transient public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.
  1. “Transient public lodging establishment” means 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.
  2. “Nontransient public lodging establishment” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 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 for periods of at least 30 days or 1 calendar month.

License classifications of public lodging establishments, and the definitions thereof, are set out in s. [509.242](#). For the purpose of licensure, the term does not include condominium common elements as defined in s. [718.103](#).

(b) The following are excluded from the definitions in paragraph (a):

1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors.
2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place regulated under s. [381.0072](#).
3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients.
4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent.
5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. [381.008-381.00895](#).
6. Any establishment inspected by the Department of Health and regulated by chapter 513.
7. Any nonprofit organization that operates a facility providing housing only to patients, patients’ families, and patients’ caregivers and not to the general public.
8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department’s behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement.
9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. [509.242](#).

(5)(a) “Public food service establishment” means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption. The term includes a culinary education program, as defined in s. [381.0072\(2\)](#), which offers, prepares, serves, or sells food to the general public, regardless of whether it is inspected by another state agency for compliance with sanitation standards.

(b) The following are excluded from the definition in paragraph (a):

1. Any place maintained and operated by a public or private school, college, or university:
  - a. For the use of students and faculty; or
  - b. Temporarily to serve such events as fairs, carnivals, food contests, cook-offs, and athletic contests.
2. Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:
  - a. For the use of members and associates; or
  - b. Temporarily to serve such events as fairs, carnivals, food contests, cook-offs, or athletic contests.

Upon request by the division, a church or a religious, nonprofit fraternal, or nonprofit civic organization claiming an exclusion under this subparagraph must provide the division documentation of its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization.

3. Any eating place maintained and operated by an individual or entity at a food contest, cook-off, or a temporary event lasting from 1 to 3 days which is hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization. Upon request by the division, the event host must provide the division documentation of its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization.

4. Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.

5. Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place that is regulated under s. [381.0072](#).

6. Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. [500.12](#).

7. Any place of business where the food available for consumption is limited to ice, beverages with or without garnishment, popcorn, or prepackaged items sold without additions or preparation.

8. Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.

9. Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule.

10. Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. [381.0072](#).

11. Any research and development test kitchen limited to the use of employees and which is not open to the general public.

(6) "Director" means the Director of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

(7) "Single complex of buildings" means all buildings or structures that are owned, managed, controlled, or operated under one business name and are situated on the same tract or plot of land that is not separated by a public street or highway.

(8) "Temporary food service event" means any event of 30 days or less in duration where food is prepared, served, or sold to the general public.

(9) "Theme park or entertainment complex" means a complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually.

(10) "Third-party provider" means, for purposes of s. [509.049](#), any provider of an approved food safety training program that provides training or such a training program to a public food service establishment that is not under common ownership or control with the provider.

**(11) "Transient establishment" means any public lodging establishment that is rented or leased to guests by an operator whose intention is that such guests' occupancy will be temporary.**

(12) "Transient occupancy" means occupancy when it is the intention of the parties that the occupancy will be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is not the sole residence of the guest, the occupancy is transient.

(13) "Transient" means a guest in transient occupancy.

(14) "Nontransient establishment" means any public lodging establishment that is rented or leased to guests by an operator whose intention is that the dwelling unit occupied will be the sole residence of the guest.

(15) "Nontransient occupancy" means occupancy when it is the intention of the parties that the occupancy will not be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is the sole residence of the guest, the occupancy is nontransient.

(16) "Nontransient" means a guest in nontransient occupancy.

History.—s. 1, ch. 73-325; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 39, 42, ch. 79-240; ss. 3, 4, ch. 81-161; ss. 2, 3, ch. 81-318; s. 2, ch. 83-241; s. 3, ch. 87-117; s. 31, ch. 88-90; s. 2, ch. 88-275; ss. 2, 51, 52, ch. 90-339; s. 1, ch. 91-40; s. 4, ch. 91-429; s. 21, ch. 92-180; s. 1, ch. 93-53; s. 14, ch. 93-133; s. 36, ch. 94-180; s. 202, ch. 94-218; s. 42, ch. 95-210; s. 3, ch. 95-314; s. 2, ch. 96-384; s. 245, ch. 99-8; s. 7, ch. 2004-292; s. 1, ch. 2008-55; s. 25, ch. 2010-161; s. 1, ch. 2011-119; s. 1, ch. 2012-165; s. 275, ch. 2014-19; s. 1, ch. 2014-133; s. 1, ch. 2016-86; s. 2, ch. 2016-120.

### **61C-1.002 Licensing and Inspection Requirements.**

(1) The current license from the division shall be conspicuously displayed in the office or lobby of the licensed establishment. If no office or lobby is present on the premises of the licensed establishment, the license must be readily available for inspection upon request.

(2) To apply for licensure, an applicant must submit the appropriate application and the required fee, pursuant to section 509.251, F.S., and rule 61C-1.008, F.A.C., to the division. Any license fee received by the division is non-refundable once the establishment commences operation.

#### **(a) License Applications.**

1. Public lodging establishments, except vacation rentals and timeshare projects, required to be licensed by the division, under chapter 509, F.S., must submit DBPR HR-7027, Application for Public Lodging Establishment License (<http://www.flrules.org/Gateway/reference.asp?No=Ref-09612>), incorporated herein by reference and effective 2018 August.

2. Vacation rentals and timeshare projects required to be licensed by the division under chapter 509, F.S., must submit DBPR HR-7028, Application for Vacation Rental or Timeshare Project License (<http://www.flrules.org/Gateway/reference.asp?No=Ref-06283>), incorporated herein by reference and effective 2015 December 1.

3. Public food service establishments required to be licensed by the division under chapter 509, F.S., must submit one of the following applications, as appropriate to the establishment.

a. DBPR HR-7007, Application for Public Food Service Establishment License (<http://www.flrules.org/Gateway/reference.asp?No=Ref-08358>), incorporated herein by reference and effective 2017 June.

b. DBPR HR-7030, Application for Public Food Service Establishment License with Plan Review (<http://www.flrules.org/Gateway/reference.asp?No=Ref-08359>), incorporated herein by reference and effective 2017 June.

c. DBPR HR-7031, Application for Mobile Food Dispensing Vehicle License with Plan Review (<http://www.flrules.org/Gateway/reference.asp?No=Ref-08360>), incorporated herein by reference and effective 2017 June.

4.a. Temporary public food service establishments required to be licensed by the division under Chapter 509, F.S., must complete DBPR Form HR 5021-029, Temporary Event Vendor Receipt, Application and Inspection (<https://www.flrules.org/Gateway/reference.asp?No=Ref-04024>), incorporated herein by reference and effective 2014 March 24. The division will provide a copy of this application at the time of inspection.

b. Pursuant to section 559.79(1), F.S., the application shall require the name, address and social security number of each person who owns 10 percent or more of the outstanding stock or equity interest in the licensed activity. The division shall keep the social security number of each person reported on the application confidential, except in accordance with section 559.79(3), F.S., and as provided in law with other governmental agencies.

c. Pursuant to section 213.0535, F.S., the application shall require the federal employer identification number and sales tax identification number of the applicant. The division shall keep such numbers confidential except as provided in conjunction with the Registration Information Sharing and Exchange Program and as provided in law with other governmental agencies.

(3) Upon the division determining that each new application for license or application for change of ownership is complete, the establishment shall pass an opening inspection by the division prior to issuance of the license. An opening inspection shall not be required for vacation rentals, timeshare projects or vending machines. An opening inspection shall not be required for a change of ownership for public food service establishments that do not require a plan review if within 120 days prior to the postmark date on the application the establishment had a satisfactory inspection that did not result in administrative action or require a call-back inspection.

(4) Public lodging establishments as defined in section 509.013(4), F.S., are licensed in accordance with the classifications in section 509.242, F.S., and:

**(a) Transient establishments – are licensed as hotels, motels, transient apartments, bed and breakfast inns, vacation rentals and timeshare projects. Vacation rentals are further classified as condominiums or dwellings. A vacation rental condominium license will be issued for a unit or group of units in a condominium or cooperative. A vacation rental dwelling license will be issued for a single-family house, a townhouse, or a unit or group of units in a duplex, triplex, quadruplex, or other dwelling unit that has four or less units collectively.**

1. Vacation rental and timeshare project licenses will be issued as a single, group, or collective license pursuant to section 509.251, F.S., to either an individual person or to a licensed agent. For the purpose of this rule, “licensed agent” means the operator of a management company that has been licensed by the dwelling or unit owner, through a rental agreement or contract between the

two parties, to hold out the dwelling or unit for rent on a transient basis. A licensed agent is not required to hold a license from the Division of Real Estate.

a. A single license is a license issued by the division to an individual person or entity, but not a licensed agent. A single license may include one single-family house or townhouse, or a unit or group of units within a single building that are owned and operated by the same individual person or entity.

b. A group license is a license issued by the division to a licensed agent to cover all units within a building or group of buildings in a single complex. A group license shall only cover those units which are held out to the public as a place regularly rented to guests as defined in chapter 509, F.S.

c. A collective license is a license issued by the division to a licensed agent who represents a collective group of houses or units found on separate locations. A collective license may not be issued for more than 75 houses or units per license and is restricted to counties within one district.

## 2. Responsibilities of Vacation Rental and Timeshare Project Licensees.

a. For inspection purposes, the licensee or operator shall, upon request, meet the inspector at the site of a specified establishment with keys to the licensed house or unit being inspected.

b. The licensee or operator shall notify the division of any and all houses or units represented for inclusion in the license application. Anytime a change occurs in the street or unit address or number of houses or units included under the license, the licensee or operator shall notify the division of any and all houses or units included in the license at least 60 days prior to the expiration date of the license. In addition, a list of the included houses or units shall be maintained in a written form for inspection by request.

c. Failure to fulfill any of the responsibilities of the licensee set forth in sub-subparagraphs a. and b., above, constitutes failure to make the premises available for inspection.

d. In the case of a single license, the licensee shall be responsible for all violations pursuant to chapter 509, F.S., and chapters 61C-1 and 61C-3, F.A.C.

e. In the case of a collective license or group license, the authorized agent shall be responsible for all violations pursuant to chapter 509, F.S., and chapters 61C-1 and 61C-3, F.A.C., if violations occurred while the dwelling or unit was listed under the licensed agent or as reflected in records filed with the division.

(b) Nontransient establishments – are licensed as nontransient apartments.

(c) For all public lodging establishments except vacation rentals and timeshare projects, the operator is required to notify the division immediately of any changes in the number of rental units.

(5) Public food service establishments, as defined in section 509.013(5), F.S., are licensed in accordance with the following classifications and requirements:

(a) Nonseating:

1. Permanent – Permanent nonseating establishments are classified as those fixed public food service establishments for which the sole service provided is intended as take-out or delivery, or which do not otherwise provide accommodations for consumption of food by guests on the premises, or premises under the control of the operator. For the purposes of this section, establishments located at food courts and malls are classified in this manner as long as seating is not provided within the premises of the establishment itself.

2. Mobile food dispensing vehicle – Mobile food dispensing vehicles are classified as any vehicle mounted public food service establishments which are self-propelled or otherwise movable from place to place and include self-contained utilities, such as gas, water, electricity and liquid waste disposal. The owner is responsible for acquainting all operators with the requirements of all applicable laws and rules. All mobile food dispensing vehicles required to have vehicle identification numbers shall submit this number to the division on the application for license. All mobile food dispensing vehicles required to have a commissary under rule 61C-4.0161, F.A.C., must submit DBPR HR-7022, Commissary Notification, to the division upon application for plan review or application for a license, if plan review is not required.

3. Caterer – Caterers are classified as any public food service establishments where food or drink is prepared for service elsewhere in response to an agreed upon contract for a function or event. The term includes catering kitchens. For the purpose of this rule, the term “caterer” does not include those establishments licensed pursuant to chapter 500 or 381, F.S., or any other location where food is provided or displayed for sale by the individual meal. A licensed public food service establishment that also provides catering services is not required to hold a separate catering license from the division. Caterers must meet all applicable standards of a

public food service establishment as provided in rules 61C-1.004, 61C-4.010 and 61C-4.023, F.A.C. Separate independent caterers utilizing the equipment or premises of a licensed public food service establishment are deemed operators as defined by section 509.013(2), F.S., of such public food service establishment and subject to all applicable requirements of law and rule.

4. Temporary public food service establishments and vendors.

a. Temporary public food service establishments are classified as those establishments operated at temporary food service events as defined in section 509.013(8), F.S. If upon inspection the temporary public food service establishment does not meet minimum sanitation standards as provided in chapters 61C-1 and 61C-4, F.A.C., food service operations shall be discontinued until corrections are complete and verified by the division.

b. Public food service establishments that have a current license may operate one facility at a temporary event as part of the existing license. Each additional facility operated by the same licensee must acquire a separate temporary food service event license.

5. Vending machines – Vending machines are classified as any self-service devices licensed pursuant to chapter 509, F.S., which, upon insertion of coin or token, or by other means, dispense unit servings of time/temperature control for safety (potentially hazardous) food, either in bulk or packaged, without the necessity of replenishing the device between each operation. All vending machine owners shall submit the serial number of each vending machine to the division on DBPR HR-7007, Application for Public Food Service Establishment License. The vending machine owner shall maintain an accurate and current list of vending machine locations with the corresponding serial number. This list shall be made available to the division upon request. The division shall coordinate with the vending machine owner to schedule inspections with the assistance of the owner or the owner's agent with the capability to open and demonstrate the machine.

6. Theme park food carts – Theme park food carts are classified as mobile or stationary units which operate within the confines of a theme park or entertainment complex as an extension of or in association with a fixed public food service establishment. Such carts shall be licensed collectively by the entity which maintains and operates them. The entity which maintains and operates any food cart or group of food carts within a theme park or entertainment complex shall acquaint all operators with the requirements of all applicable laws and rules. The operator is required to notify the division immediately of any changes in the number of carts.

7. Culinary education programs – Nonseating culinary education programs are culinary education programs as defined in section 381.0072(2), F.S., which offer, prepare, serve, or sell food to the general public and that do not otherwise provide accommodations for consumption of food by guests on the premises, or premises under the control of the establishment.

(b) Seating:

1. Permanent – Permanent seating establishments are classified as those public food service establishments that provide and maintain accommodations for consumption of food on the premises of the establishment or under the control of the establishment. The operator of the establishment is responsible for providing the number of seats available to the public to the division prior to licensing. Prior to making any changes in the number of seats provided which may affect the license fee, fire safety, or the wastewater disposal system, the operator must report the change to the division by submitting DBPR Form HR 5021-103, Seating Change Evaluation (<http://www.flrules.org/Gateway/reference.asp?No=Ref-00895>), incorporated herein by reference and effective October 22, 2008, or any document obtained from the local authorities having jurisdiction that provides proof the operator obtained approval for the change. A change in the number of seats is not valid until approved by the division. License fees related to a seating change are not due until the license is renewed, unless the seating change is part of a license application.

2. Culinary education programs – Seating culinary education programs are culinary education programs as defined in section 381.0072(2), F.S., which offer, prepare, serve, or sell food to the general public and that provide and maintain accommodations for consumption of food on the premises of the establishment or under the control of the establishment. The operator of the establishment is responsible for providing the number of seats available to the public to the division prior to licensing. Prior to making any changes in the number of seats provided which may affect the license fee, fire safety, or the wastewater disposal system, the operator must report the change to the division by submitting DBPR Form HR 5021-103, Seating Change Evaluation or any document obtained from the local authorities having jurisdiction that provides proof the operator obtained approval for the change. A change in the number of seats is not valid until approved by the division. License fees related to a seating change are not due until the license is renewed, unless the seating change is part of a license application.

(c) Plan Reviews.

1. The operator of each public food service establishment to be newly constructed, remodeled, converted, or reopened after being out of business for more than 12 months shall submit properly prepared facility plans and specifications to the division for review and approval in accordance with the provisions of chapter 509, F.S., and rule chapters 61C-1 and 61C-4, F.A.C. Such plans

must be approved by the division as meeting the sanitation and safety requirements provided in law prior to scheduling of an opening inspection and licensing. For remodeling, plan review submittal is not required if the division can otherwise determine that the intended remodeling will not have an impact on any sanitation and safety requirements provided in law or rule. Plan review is not required for applications for change of ownership when no interruption in operation or no change to the establishment occurs. Plan reviews for additional theme park food carts are not required if such units have been previously reviewed and approved and have no modifications from the originally approved model.

2. The plans and specifications shall indicate the general operation of the establishment; the intended menu items; location of employee and public bathrooms; proposed layout, including all work, guest, and employee areas and storage facilities; construction finishes of work areas; and equipment location, design and installation, including the type of proposed fixed equipment and facilities. Plans and specifications must be submitted by the owner, prospective operator or their designated representative along with DBPR HR-7005, Application for Plan Review (<http://www.flrules.org/Gateway/reference.asp?No=Ref-08356>), incorporated by reference herein and effective 2017 June, or DBPR HR-7030, Application for Public Food Service Establishment License with Plan Review. Plans and specifications, for mobile food dispensing vehicles must be submitted by the owner, prospective operator or their designated representative along with DBPR HR-7006, Mobile Food Dispensing Vehicle Plan Review Application (<http://www.flrules.org/Gateway/reference.asp?No=Ref-08357>), incorporated herein by reference and effective 2017 June, or DBPR HR-7031, Application for Mobile Food Dispensing Vehicle License with Plan Review. The division shall grant or deny approval of the plans in writing pursuant to the provisions of chapter 120, F.S.

3. When the establishment's water source is a well or the sewer source is an onsite sewage treatment and disposal system, applicants for plan review must also submit proof of approval from the Department of Health.

(d) A public food service establishment operating in conjunction with a public lodging establishment must obtain a separate public food service establishment license from the division, unless the only food served at the public lodging establishment is packaged or prepackaged as defined in the Food Code, as adopted by reference in rule 61C-1.001, F.A.C. In such cases, the establishment which prepares the food is subject to the licensing provisions of this chapter, unless otherwise exempt.

(6) Renewal – The licensee is responsible for renewing the license prior to the expiration date. Any public lodging establishment or public food service establishment operating on an expired license is deemed to be operating without a license, and subject to the penalties provided for this offense in law and rule. Annual renewal dates for all establishments are determined by district and county as follows:

- (a) DISTRICT 01 – October 1 – Dade, Monroe;
- (b) DISTRICT 02 – December 1 – Broward, Martin, Palm Beach;
- (c) DISTRICT 03 – February 1 – Citrus, Hernando, Hillsborough, Pasco, Pinellas, Polk, Sumter;
- (d) DISTRICT 04 – April 1 – Brevard, Indian River, Lake, Orange, Osceola, St. Lucie, Seminole, Volusia;
- (e) DISTRICT 05 – June 1 – Alachua, Baker, Bradford, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Lafayette, Levy, Marion, Nassau, Putnam, St. Johns, Suwannee, Union;
- (f) DISTRICT 06 – June 1 – Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, Washington; and,
- (g) DISTRICT 07 – December 1 – Charlotte, Collier, Desoto, Glades, Hardee, Hendry, Highlands, Lee, Manatee, Okeechobee, Sarasota.

(7) The division shall issue a license to each public lodging establishment and public and food service establishment which has satisfied the requirements of chapter 509, F.S., and this chapter upon initial licensing and annual renewal. In addition to the license, the division shall issue a license decal to each mobile food dispensing vehicle, theme park food cart and vending machine, which must be prominently displayed and affixed to the vehicle, cart or machine.

(8) General Inspection Requirements.

(a) Division personnel shall inspect all public lodging establishments as often as necessary for enforcement of the provisions of law and rule and protection of the public's health, safety and welfare. The result of each inspection shall be recorded on DBPR Form HR-5022-014, LODGING INSPECTION REPORT (<https://www.flrules.org/Gateway/reference.asp?No=Ref-07062>), incorporated herein by reference and effective 2016 July, a legible copy of which shall be provided to the operator.

(b) Division personnel shall inspect all public food service establishments and other places where food is served to or prepared for service to the public as often as necessary for enforcement of the provisions of law and rule and protection of the public's health, safety and welfare. The result of each inspection, except inspections of temporary public food service establishments, shall be

recorded on DBPR Form HR-5022-015, FOOD SERVICE INSPECTION REPORT (<http://www.flrules.org/Gateway/reference.asp?No=Ref-07063>), incorporated herein by reference and effective 2016 July, a legible copy of which shall be provided to the operator. The result of each inspection of a temporary public food service establishment shall be recorded on DBPR Form HR 5021-029, TEMPORARY EVENT VENDOR RECEIPT, APPLICATION AND INSPECTION, a legible copy of which shall be provided to the operator. Persons operating a public food service establishment shall permit division personnel right of entry during operating hours to observe food preparation and service, and if necessary examine records of the establishment to obtain pertinent information pertaining to food and supplies purchased, received or used.

(c) The operator of each public food service establishment shall maintain the latest inspection report on premises and shall make it available to any consumer who asks to see it.

(d) Inspection Frequency. The division shall annually inspect each licensed public lodging and food service establishment as described herein and at such times as the division determines necessary to ensure the public’s health, safety and welfare. The annual inspection cycle shall begin July 1 and end June 30 the following year.

1. Public lodging establishments shall be inspected as prescribed by section 509.032(2)(a), F.S.
2. Public food service establishments.

a. The minimum number of annual inspections required for each public food service establishment shall be based upon the risk presented by the establishment’s type of food and food preparation processes, type of service, and compliance history. An establishment’s initial classification shall be assigned upon annual inspection or upon application for a license and verified at the licensing inspection, as applicable. Public food service establishments shall be classified and inspected according to the following risk-based inspection frequency schedule.

Classification	Public Food Service Establishment Classification Guidelines	Minimum Annual Inspections
Level 1	Establishments licensed as culinary education programs, annual temporary public food service establishments, vending machines, or Establishments that: <ul style="list-style-type: none"> <li>• Do not cook raw animal food, or</li> <li>• Cook raw animal food, but do not cool any cooked or heated foods.</li> </ul>	1
Level 2	Establishments that: <ul style="list-style-type: none"> <li>• Cook raw animal food and cool any cooked or heated foods, or</li> <li>• Conduct a special process as described in 3-502.11 or 3-502.12, Food Code, as adopted by reference in rule 61C-1.001, F.A.C., or</li> <li>• Serve a raw or undercooked animal food that requires a consumer advisory under 3-603.11, Food Code, as adopted by reference in rule 61C-1.001 or 61C-4.010, F.A.C.</li> </ul>	2
Level 3	Establishments with a history of non-compliance resulting in three or more disciplinary Final Orders filed with the Agency Clerk within the previous two annual inspection cycles, or Establishments that serve a highly susceptible population as defined in the Food Code, as adopted by reference in rule 61C-1.001, F.A.C.	3
Level 4	Establishments with a confirmed foodborne illness within the previous calendar year as reported by the Florida Department of Health.	4

b. The division shall reassess each establishment’s inspection frequency classification and reclassify each establishment as necessary.

3. Establishments initially licensed between January 1 and June 30 will receive a prorated number of annual inspections, including the opening inspection, during the first annual inspection cycle.

(9) Obtaining forms. All forms incorporated in this section are available from the Division of Hotels and Restaurants internet website [www.MyFloridaLicense.com/dbpr/hr](http://www.MyFloridaLicense.com/dbpr/hr); by e-mail request submitted at [www.MyFloridaLicense.com/contactus](http://www.MyFloridaLicense.com/contactus); by phone request to the department at (850)487-1395; or upon written request to the Division of Hotels and Restaurants, Department of Business and Professional Regulation, 2601 Blair Stone Rd., Tallahassee, Florida 32399-1011.

509.2112, 509.013 FS. History–New 1-20-63, Amended 9-19-63, 5-20-64, 2-23-66, 8-9-68, 2-4-71, 10-18-71, Repromulgated 12-18-74, Amended 9-1-83, 10-1-83, Formerly 7C-1.02, Amended 1-30-90, 12-31-90, 2-27-92, 6-15-92, Formerly 7C-1.002, Amended 3-31-94, 3-15-95, 10-9-95, 9-25-96, 5-11-98, 9-9-03, 1-1-13, 7-4-13, 7-1-14, 11-20-14, 12-28-15, 2-24-16, 7-11-16, 12-28-16, 7-16-17, 9-2-18.

(A) *Applicability and purpose.*

- (1) This section shall apply in the unincorporated areas of Miami-Dade County.
- (2) The purpose of this section is to provide additional regulations pertaining to vacation rentals to preserve the quiet nature and atmosphere of residential areas and to ensure to the County's residents the tranquility and peaceful enjoyment of their neighborhoods. These regulations shall be in addition to, and shall not supplant, other provisions in this code and the CDMP that may apply to vacation rentals; and in the event of a conflict, the more restrictive provision shall control. Nothing in this section shall be deemed to create an enforceable right or private right of action against the County.

(B) *Definitions.* For purposes of this section, the following definitions shall apply:

- (1) *Peer-to-peer or platform entity* shall mean any person, service, business, company, marketplace, or other entity that, for a fee or other consideration, provides property owners and responsible parties a platform or means to offer vacation rentals to transient occupants, whether through the internet or other means.
- (2) *Property owner* shall mean the person who, or entity that, owns the property being used or occupied as a vacation rental.
- (3) *Responsible party* shall mean the person or entity authorized by the property owner to obtain a Certificate of Use for a vacation rental, and who will be:
  - (a) Responsible for ensuring compliance with all regulations related to vacation rentals; and
  - (b) Available to respond 24 hours per day, 7 days per week to any issue that arises relating to the vacation rental.

The property owner may serve as responsible party.

- (4) *Transient occupant* shall mean any person who rents or occupies any dwelling unit or residence or part thereof for less than 30 days or one calendar month, whichever is less, and any guest or invitee of such person.

- (5) *Vacation rental* shall mean any dwelling unit or residence, including, but not limited to, any unit or group of units in a condominium, cooperative, or apartment building, that is rented in whole or in part to a transient occupant for a period of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place that may be rented to a transient occupant, but shall not include a hotel, motel, or bed and breakfast as defined in this code and referenced in the CDMP. For purposes of this section, the term vacation rental is synonymous with the term short-term residential rental.

(C) *Certificate of Use Required.* No property owner, responsible party, or peer-to-peer or platform entity shall offer as a vacation rental, or allow any person to rent or occupy as a vacation rental, any property in whole or in part within the unincorporated area of Miami-Dade County, unless a Certificate of Use has first been obtained in accordance with the provisions of this section. A property may be offered as a vacation rental immediately upon submission of an application for Certificate of Use, unless and until such time as the application is thereafter rejected or revoked for failure to pass inspection.

- (1) *Application.* A complete Certificate of Use application shall be submitted to the Department online or in hard copy. A peer-to-peer or platform entity may enter into an agreement with the County whereby the peer-to-peer or platform entity agrees to submit applications on behalf of responsible parties. The application must be signed under oath or affirmation, and shall include the following:
  - (a) The address and legal description of the vacation rental property;
  - (b) Name, address, and phone number of the property owner;
  - (c) Name, address, and phone number of the responsible party;
  - (d) Name and contact information for the peer-to-peer or platform entity or entities on which the vacation rental is, or will be, listed for rent;
  - (e) Statement that the responsible party is, or will be, remitting all applicable local Miami-Dade County business and tourist taxes; or that a peer-to-peer or platform entity through which vacation rentals are booked will be remitting all such taxes associated with the vacation rental on the responsible party's behalf;
  - (f) Statement that the responsible party has the permission of the property owner and authority to offer the property as a vacation rental and act as the responsible party;
  - (g) Statement as to whether the entire property, or just a part thereof (i.e., a room or rooms), will be used as a vacation rental; and
  - (h) Statement that insurance coverage will be in effect at all times while the property is being used as a vacation rental to cover liability for injury or harm to transient occupants or other invitees, and acknowledging that a standard homeowner's or renter's insurance policy may not necessarily provide such liability coverage while the property is used as a vacation rental;
  - (i) Statement acknowledging that the responsible party has received information explaining that using the property as a vacation rental could result in loss of the Homestead Exemption, and has provided such information to the property owner;
  - (j) Statement indicating how many times, and for how many days in all, the property was used as a vacation rental within the previous calendar year;
  - (k) Statement acknowledging that the vacation rental must be registered with the Florida Department of Revenue, or successor agency,

for purposes of collecting and remitting applicable state taxes and all such state taxes have been, or will be, paid;

- (l) Statement acknowledging that a vacation rental license, issued by the Florida Department of Business and Professional Regulation, or successor agency, must be obtained; and
  - (m) Statement acknowledging that the property is, and will be at all times during which it is used as a vacation rental, maintained in compliance with the vacation rental standards set forth in subsection (D) below.
- (2) *Supporting documentation.* The responsible party shall maintain all required licenses, records, and other documentation sufficient to demonstrate that the statements and information required by subsection (1) above are true and accurate. All such licenses, records, and other documentation shall be provided upon request, and failure to do so may result in the denial, suspension, or revocation of the Certificate of Use.
- (3) *Providing false information.* Providing false or misleading information in an application for a Certificate of Use is grounds to deny or revoke the Certificate of Use. A determination that false or misleading information was provided in an application is appealable to a hearing examiner in accordance with the procedures set forth in chapter 8CC or section 1-5, or both.
- (4) *Annual renewal.* The Certificate of Use shall be renewed annually. A Certificate of Use may not be renewed if there are any outstanding fines or liens for violations of this code.
- (5) *Inspection.* Upon the issuance or renewal of a Certificate of Use, the vacation rental property shall be subject to inspection to ensure compliance with all applicable code requirements. At the time of such inspection, the responsible party shall provide all licenses, records, and other documentation sufficient to demonstrate compliance with all requirements of this section.
- (6) *Enforcement history.*
- (a) When reviewing an application to obtain or renew a Certificate of Use, the Department shall consider the violation history of the property identified in the application. If the violation history shows three or more violations of this section within the preceding 12 months, the Department shall not issue or renew the Certificate of Use unless:
    - (i) All outstanding violations or liens are first satisfied and corrected; and
    - (ii) A bond in the amount of \$10,000.00 is provided to the Department, in the form approved by the Director. The bond shall be subject to forfeiture for future violations, as set forth in this section.
  - (b) When the violation history shows three or more violations of this section within the preceding 12 months, the Department shall notify the peer-to-peer or platform entity, if known, of the property at which the violations have occurred, and the dates of the violations.
  - (c) When calculating whether a vacation rental property has three or more violations within the preceding 12 months, if one or more unresolved citations that will affect the decision to issue or renew the Certificate of Use are pending, the Director may issue or renew a Certificate of Use on a provisional basis and for a limited time, which may be extended by the Director for good cause shown.
- (D) *Vacation Rental Standards.* The following vacation rental standards shall govern vacation rentals in unincorporated Miami-Dade County:
- (1) *Duties of peer-to-peer or platform entity.* For each vacation rental listed or offered, a peer-to-peer or platform entity shall:
    - (a) Provide notice of the requirements of this section to any person or entity listing or offering a vacation rental on its service or platform;
    - (b) Only provide payment processing services, or otherwise facilitate payment for a vacation rental that has a valid Certificate of Use in accordance with this section. A peer-to-peer or platform entity shall not be held liable pursuant to this subsection where it:
      - (i) Requires the responsible party to have applied for or obtained a Certificate of Use number as a precondition to listing or offering a vacation rental on its platform;
      - (ii) Provides the Department on at least a weekly basis the Certificate of Use number or application number, the listing identification number associated therewith, the address of the vacation rental property, and the responsible party's name and contact information for all listings on the platform in unincorporated Miami-Dade County; and
      - (iii) Removes any listing from the platform within 10 days of notification from the Department that a Certificate of Use number or application number associated with the listing is invalid or expired, or that the enforcement history of a vacation rental associated with the listing shows three or more violations within the preceding 12 months, pursuant to subsection (C)(6) herein.
    - (c) Include language in rental documents to discourage the secondary subletting of vacation rentals;
    - (d) Maintain records demonstrating that the requirements of this subsection have been satisfied, and such records shall be subject to inspection by the Department upon request, provided, however, that certain confidential information, such as social security numbers, credit card information, and names of minors, shall not be subject to inspection upon request of the County; and
    - (e) Make available to the County for inspection upon request all records relating to any suspected violations of state or local law associated with any vacation rental property in unincorporated Miami-Dade County, provided, however, that certain confidential information, such as social security numbers, credit card information, and names of minors, shall not be subject to inspection upon request of the County.
  - (2) *Duties of responsible party.* For each vacation rental, the responsible party shall:

- (a) Provide written notice to transient occupants, prior to occupancy of the vacation rental, of the vacation rental standards set forth herein laws, ordinances, or regulations concerning noise, public nuisance, vehicle parking, solid waste collection, and common area usage. This also be made available to each transient occupant inside the subject property;
  - (b) Provide notice to prospective transient occupants at the time the subject property is listed as a vacation rental of any limitations on the property pertaining to access for the disabled;
  - (c) Provide notice to the homeowner's association or condominium/cooperative association or board, if any, that the subject property will be used as a vacation rental and adhere to all policies, rules, and regulations of such association or board pertaining to vacation rentals;
  - (d) Ensure compliance with all provisions of this section, including the vacation rental standards set forth herein, and promptly address and report any violations of this section or of such other law or regulation of which the responsible party knows or should know to the Department or law enforcement, as appropriate, as well as to the peer-to-peer or platform entity;
  - (e) Ensure that any violations regarding the rental of the property are able to be promptly addressed and resolved 24 hours a day/7 days per week; and
  - (f) Maintain a register with names and dates of stay of all guests, including but not limited to all transient occupants and their invitees, which shall be open to inspection by the County.
- (3) *Maximum occupancy.* Maximum overnight occupancy for vacation rentals shall be up to a maximum of two persons per bedroom, plus two additional persons per property, up to a maximum of 12 persons, excluding children under three years of age. At all other times, maximum occupancy for vacation rentals shall not exceed the maximum overnight occupancy of the vacation rental plus four additional persons per property, up to a maximum of 16 persons, excluding children under three years of age. For purposes of this subsection, "overnight" shall mean from 10:00 p.m. until 7:00 a.m. the following day. Notwithstanding the foregoing, at no time may the occupancy of a vacation rental exceed the maximum occupant load for the property under the Florida Building Code.
- (4) *Responsible party residency.* In any area designated on the CDMP as Estate or Low Density residential, the property on which a vacation rental is operated shall be a residence in which the responsible party resides for more than six months per calendar year. Nothing in this subsection shall preclude the rental of the property at the same time that the responsible party is residing there. The requirement of responsible party residency set forth in this subsection shall not apply to a vacation rental located in any area designated Low-Medium, Medium, Medium-High, or High Density residential on the CDMP.
- (5) *Solid waste handling and containment.* Solid waste containers sufficient to handle the maximum occupancy permitted shall be maintained in accordance with [chapter 15](#). All regulations regarding screening and storage of solid waste containers shall apply to vacation rentals. For purposes of this section, and as required in [section 15-5](#), all solid waste containers shall be placed at curbside or other designated collection area only on scheduled collection days, no later than 7:00 a.m., and shall be removed therefrom that same day once collection has occurred.
- (6) *Advertising and signs.* Signs shall only be allowed to the extent permitted by the regulations in the code applicable to the relevant zoning district. Any advertisements or signs pertaining to vacation rentals that are inconsistent with the requirements, restrictions, and regulations of the Certificate of Use or these vacation rental standards shall be deemed prima facie evidence in any enforcement action that a vacation rental is being operated in violation of this section.
- (7) *Sexual offenders and sexual predators.*
- (a) If the vacation rental property is within 2,500 feet of a school, pursuant to [section 21-283](#) it shall be a violation to allow any person to occupy the property with knowledge that such person is a registered sexual offender or registered sexual predator in any jurisdiction. The responsible party shall be required to obtain confirmation of a nationwide search from the Miami-Dade County Police Department or other law enforcement agency that the prospective transient occupant or occupants is not a registered sexual offender or sexual predator as a result of a conviction of a sexual offense, as defined in [section 21-280](#). The responsible party may call the Miami-Dade County Answer Center (311) to obtain assistance or referrals to determine whether a prospective transient occupant is a sexual offender or predator and to determine whether a residence is 2,500 feet from a particular school.
  - (b) If the vacation rental property is within 2,500 feet of a school, pursuant to [section 21-281](#) it shall be a violation of this section for a sexual offender or sexual predator to occupy the property for a period of four or more days in any month.
- (8) *Posting of Certificate of Use.* Whenever a property is being used as a vacation rental, the Certificate of Use required by this section shall be available in a conspicuous location that is clearly visible to guests within the vacation rental and shall include, at a minimum, the name, address, and phone number of the responsible party and the maximum occupancy of the vacation rental.
- (9) *Parking and vehicles.* All parking must comply with article VII of this chapter, and all other applicable sections of this code. In addition, all vehicles associated with the vacation rental, whether in the possession or control of the property owner, responsible party, or transient occupant, shall only be parked within a driveway or in a designated parking area on the subject property; or, where there is no such driveway or designated parking area, vehicles shall only be parked on the street or swale directly in front of the subject property. Transient occupants shall not be permitted to park more than two vehicles at any one time on the subject property or on the street or swale during the rental period.

- (10) *Noise.* All transient occupants shall abide by section 21-28 of this code, which prohibits unreasonably loud, excessive, unnecessary, or unusual addition, outdoor amplified sound at a vacation rental shall not be permitted at any time.
  - (11) *Public nuisance.* The responsible party and all transient occupants shall abide by all applicable state and local public nuisance laws and ordinances, including, but not limited to, sections 823.05 and 823.10 of the Florida Statutes and article XIII A of this code, which prohibits any place or premises from being used as the site for the unlawful sale or delivery of controlled substances, prostitution, youth and street gang activity, gambling, illegal sale or consumption of alcoholic beverages, or lewd or lascivious behavior that adversely affects the public health, safety, morals, and welfare.
  - (12) *Pets.* If the responsible party permits transient occupants to have pets at the vacation rental, such pets shall be at all times secured within the property lines or on a leash, but shall not be tethered. Continual nuisance barking by pets is prohibited. The keeping of pets shall be subject to the regulations of this chapter and chapter 5 of this code regarding animals.
  - (13) *Swimming pool safety features.* If there is a swimming pool onsite, the responsible party shall ensure that the swimming pool has in place at least one of the pool safety features listed in Section 515.27, Florida Statutes, (i.e., pool safety barrier, pool safety cover, pool alarm, or door latch/alarm) prior to use of the property as a vacation rental by any person under the age of six. The responsible party shall be deemed to have complied with this provision if the pool safety feature is put in place at the time that the property is turned over to any transient occupant occupying the vacation rental. This provision shall not apply to a vacation rental with a community swimming pool onsite, such as in a condominium, as determined by the Director. Compliance with this provision shall be in addition to compliance with section 33-12 of this code pertaining to swimming pool fences.
  - (14) *Compliance with applicable laws.* In addition to the foregoing, the responsible party and all transient occupants shall comply with all other applicable local, state, and federal laws, regulations, rules, and standards, including, but not limited to, those pertaining to anti-discrimination, disability, and fair housing to the extent applicable.
- (E) *Enforcement.* The requirements of this section may be enforced in accordance with the following:
- (1) *Penalties.* Any person operating a vacation rental without a Certificate of Use or in violation of the vacation rental standards or any other provisions in this section shall be subject to the penalties set forth in section 8CC-10 and section 1-5, or both, of this code and to all other enforcement measures authorized in this code or by other applicable law.
  - (2) *Forfeiture of bond.*
    - (a) Where a bond is required to obtain or renew a Certificate of Use, if the vacation rental property is cited for a violation of this section within 12 months of providing the bond, and that citation is later resolved adversely to the owner or responsible party, then the bond shall be deemed forfeited, and the Certificate of Use for that vacation rental shall be revoked and may not be reissued for 12 months.
    - (b) If there are no violations for 12 months after providing the security, the Department shall release the bond upon written request from the responsible party. Until the responsible party obtains release, the bond shall continue to be subject to forfeiture for future violations.
  - (3) *Joint and several liability.* The property owner of the vacation rental property shall be liable for any violations of this section, any rule or regulation promulgated under this section, or any order of the Director made under this section. In addition, whenever two or more persons commit such a violation, each violator shall be jointly and severally liable for any fines or other damages assessed. This applies to situations where a property owner, responsible party, peer-to-peer or platform entity, or transient occupant, or any combination thereof, are together responsible for a violation of this section. It is provided, however, that where a peer-to-peer or platform entity does not itself commit a violation of this section, it shall not be held jointly and severally liable, nor shall it be held vicariously liable for any violations committed solely by the responsible party or transient occupants. In addition, where a peer-to-peer or platform entity complies with subsection (D)(1)(b)(i), (ii), and (iii), it shall not be held jointly and severally liable for providing a listing for, or collecting a fee for listing, any vacation rental.
  - (4) *Affordable Housing Trust Fund.* Five percent of all monies collected as penalties or fines based on violations of this section shall be deposited into the Affordable Housing Trust Fund of Miami-Dade County, established in chapter 17, article VIII of this code.

**DBPR HR-7028 – Division of Hotels and Restaurants Application for Vacation Rental or Timeshare Project License**

STATE OF FLORIDA, DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

2601 Blair Stone Road, Florida 32399-0783

850.487.1395 – Web: [www.MyFloridaLicense.com/contactus/](http://www.MyFloridaLicense.com/contactus/) & [www.myfloridalicense.com/DBPR/hotels-restaurants/](http://www.myfloridalicense.com/DBPR/hotels-restaurants/)

**Section 1 – License Type**

Please check the box that best describes the establishment type (see instructions for definitions).

Vacation Rental:  Condominium (2006)  Dwelling (2007)  Timeshare Project (2022):  
Timeshare Project Number

**Classification:** Check one box that best describes the license classification.

Single (SNGL)  Group (GRP)  Collective (CLCT)

**NUMBER OF RENTAL UNITS (NOTE: There is a 75-unit limit for collective licenses.)**

**Section 2 – Application Information**

Please check the appropriate box and provide information as applicable.

New Establishment  Change of Ownership (previously licensed within the last year by H&R)  
Lodging License Number Previous Business Name

Federal Employers Identification Number (FEIN) <i>(For businesses and corporations)</i>		* Under the Federal Privacy Act, disclosure of Social Security Numbers is voluntary unless specifically required by Federal statute. In this instance, disclosure of social security numbers is mandatory pursuant to Title 42 United States Code, Sections 653 and 654; and sections 409.2577, 409.2598, and 559.79, Florida Statutes. Social Security numbers are used to allow efficient screening of applicants and licensees by a Title IV-D child support agency to assure compliance with child support obligations.
Social Security Number (REQUIRED)* <i>(For president, primary shareholder, partner or individual)</i>		
Sales Tax Number (Check if exempt <input type="checkbox"/> )		
Opening Date (MM/DD/YYYY)		

**Section 3 – Owner and Main Address (MA)**

Note: This address will be designated as the "address of record" for the owner of this establishment.

FOR ESTABLISHMENTS OWNED OR OPERATED BY PARTNERSHIPS, CORPORATIONS OR COOPERATIVES, please attach a separate sheet or sheets listing the name, address, and social security number of each person who owns 10% or more of the outstanding stocks or equity interest in the licensed activity and the name, address, and social security numbers\* of each officer, director, chief executive, or other person who, in accordance with the rules of the issuing agency, is determined to be able directly or indirectly to control the operation of the business of the licensed entity.

Owner Name (please check one:  Corporation  Partnership  Individual)

Routing Name (e.g., Management Company, contact name)

Street Address or Post Office Box

City	State	Zip Code (+4 optional)
------	-------	------------------------

Florida County (if applicable)	Country
--------------------------------	---------

Phone Number	E-Mail Address
--------------	----------------

**Section 4 – Establishment Location Information (LL)**

Note: For more than one rental unit, please list one building address as the "main" unit and attach a list of all other rental units.

Establishment Name (DBA)

Street Address

City	Zip Code (+4 optional)	Florida County
------	------------------------	----------------

Phone Number	E-Mail Address
--------------	----------------

**Section 5 – Mailing Information (LM)**

Note: This address will be used by the department for all mailings, including the license.

Complete below or check here if: Same as Section 3 – Owner and Main Address  Same as Section 4 – Establishment Location

Routing Name (e.g., Management Company, contact name)

Street Address or Post Office Box

City	State	Zip Code (+4 optional)
------	-------	------------------------

Florida County (if applicable)	Country
--------------------------------	---------

Phone Number	E-Mail Address
--------------	----------------



**Section 6 - License Modifier**

**Seasonal:** Will this establishment be operated only during a particular time period during the year?  Yes  No  
If Yes, indicate the seasonal dates in which the establishment will be open for operation below.

Start Date

End Date

**Section 7 - Signature**

SECTION 559.79 (2), FS: Each application for a license or renewal of a license issued by the Department of Business and Professional Regulation shall be signed under oath or affirmation by the applicant, or owner or chief executive of the applicant without the need for witnesses unless otherwise required by law.

I certify that I am empowered to execute this application as required by Section 559.79, Florida Statutes. I understand that my signature on this written declaration has the same legal effect as an oath or affirmation. Under penalties of perjury, I declare that I have read the foregoing application and the facts stated in it are true. **I understand that falsification of any material information on this application may result in criminal penalty or administrative action, including a fine, suspension or revocation of the license.**

Applicant Name

Applicant Title

Signature

Date

**Complete the application and supporting documents and mail them with the appropriate fees to:**

**Division of Hotels and Restaurants  
Department of Business and Professional Regulation  
2601 Blair Stone Road  
Tallahassee, FL 32399-0783**

**Reminder:** Please use the entire 9-digit zip code in the address above to ensure proper handling. Please allow up to 30 days for processing after mailing. After we process your application, we will mail your license to the address noted in Section 5 of the application. We do not require inspections prior to licensing vacation rentals or timeshare projects, but we may inspect at any time upon request or complaint.

IN THE CIRCUIT COURT OF THE 11<sup>Th</sup>  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

Natalie Nichols,

Plaintiff,

v.

City of Miami Beach, Florida,  
et al.,

Defendant.

CIRCUIT CIVIL DIVISION  
CASE NO.: 2018-21933 ca (22)

**ORDER ON CROSS-MOTIONS FOR  
SUMMARY JUDGMENT**

FILED FOR RECORD  
2019 OCT -8 PM 2:08  
CLERK, CIRCUIT & COUNTY CLERK  
MIAMI-DADE COUNTY, FLORIDA  
CIVIL DIVISION #136  
HARVEY RUVIN

**I. INTRODUCTION**

Plaintiff, Natalie Nichols (“Plaintiff” or “Nichols”), challenges two ordinances enacted by Defendant, City of Miami Beach, Florida (“Defendant” or “City”), which, with limited exceptions, ban short-term rentals of residential property. Nichols attacks these ordinances on three fronts. First, she insists that the ordinances are unconstitutional under the equal protection provisions of Article I, Section 2 of the Florida Constitution “because they prohibit the short-term rental of [her] properties, while allowing the short-term rental of “similarly situated properties.” Second Amended Complaint, (“Complaint”), Count I. Nichols next claims that the ordinances violate Article I, Section 17 of the Florida Constitution, both facially and as applied, because they impose “grossly excessive punishment meant to deter people from peacefully using their property for home-sharing.” Complaint, Count II. Finally, Nichols says that these Ordinances conflict with

Florida Statute Section 163.09(2)(d), which limits the fines municipalities may levy for code violations to “\$1,000.00 per day for the first violation and \$5,000.00 per day for repeat violations.” Complaint, Count III.

Because the preemption claim advanced in Count III raises a purely legal and potentially dispositive issue, the Court directed the parties to file cross-motions for summary judgment directed to that claim only. The City filed its “Motion for Summary Judgment” (“Motion”), on March 28, 2019, and Plaintiff filed her “Cross-Motion for Summary Judgment” (“Cross-Motion”) and opposition to the City’s motion on April 26, 2019. On May 10, 2019 the City filed its “Reply in Support of its Motion for Summary Judgment” and response to Plaintiff’s Cross-Motion. The Court entertained argument on September 10, 2019 and ordered limited supplemental briefing. The matter is now ripe for disposition.

## **II. UNDISPUTED RELEVANT FACTS**

In recent years on-line platforms such as Airbnb and Homeaway have made it much easier for property owners to enter into short-term rentals. Many property owners do so in order to generate supplemental income and defray the cost of maintaining their real estate. Other property owners (and citizens who may not own property) are not as enamored with the emergence of this “industry,” and believe that transient occupancy negatively impacts property values as well as the health, safety and welfare of their community.

After balancing these competing interests/concerns, the City – in the exercise of its police power – enacted two ordinances which for all practical purposes ban short-term rentals on Miami Beach. The first, codified at City Code § 142-905(b)(5), governs short-term rentals of single-family homes. The second, codified as City Code § 142-111, governs short-term rentals of townhomes, condominium, and apartments. Generally speaking, both ordinances prohibit the rental of properties for terms of six months or less, with limited exceptions that are not pertinent to the issues framed by the pending motions.

If a property owner rents for a period of less than six months and one day- and thereby violates either ordinance – they are subject to escalating fines of \$20,000.00 for the first offense, \$40,000.00 for the second, \$60,000.00 for the third, \$80,000.00 for the fourth, and \$100,000.00 for all offenses thereafter. City Code §§ 142-905(b)(5)(a) and 1111(e)(1). These hefty (some might say exorbitant) fines are, in the City’s view, necessary to impel compliance given the value (and corresponding rental income potential) of many properties located on Miami Beach. Chapter 30 of the City Code sets forth procedures for enforcement, and provides that a special master will hear Code violation disputes. A special master, however, has no ability to waive or reduce fines if a violation is found. City Code § 142.905(b)(5) (“the special master shall not waive or reduce fines”).

Plaintiff owns two properties on Miami Beach, a single-family home located at 1531 Stillwater Drive that she has owned since 2004, and a “four-plex” located at 807 86<sup>th</sup> Street that she has owned since 2006. The former is covered by Ordinance §142-905(b)(5) and the latter by Ordinance 142-1111. Plaintiff alleges that she has “conducted short-term rentals” of both properties “in the past,” and that “[b]ut for the City’s prohibition on short-term rentals and extremely high fines, [she] would resume conducting short-term rentals on both properties.” Complaint, ¶¶ 24-26.

### **III. THE PARTIES’ POSITIONS**

According to Plaintiff, Article I, Section 18 of the Florida Constitution limits all administrative fines to those authorized by the Florida Legislature,” and no city may “adopt any fines that the legislature has not authorized it to adopt.” Plaintiff’s Cross-Motion, pp. 1, 3. Plaintiff then points out that Florida Statute § 162.09 “limits municipal fines to \$1,000.00 for the first offense and \$5,000.00 for subsequent offenses,” Cross-Motion, p. 3, and insists that “these are the highest fines that any city may impose for property code violations.” Cross-Motion, p. 5. Put simply, Nichols says that the ordinances conflict with state law and must therefore yield.

The City disagrees. In its view, Chapter 162 permits a municipality to “adopt an alternate code enforcement system,” including one that imposes higher fines than those statutorily authorized. Motion, p. 4. This is so – according to the City – because § 163.03(2) and § 162.13 grant it a right to “opt-out” of Chapter 162

altogether and, if it does, impose *any* fine it desires, with no limitation other than excessive fines clauses of the United States and Florida Constitutions. In response, Plaintiff argues that the City's interpretation of these provisions (§ 162.03(2) and §163.13) is "unsupported by law or logic" and, if embraced by this Court, would render § 162.09's statutory caps "meaningless." Cross-Motion, pp. 3, 6. In Plaintiff's view, § 162.03 grants a municipality the authority to adopt alternate "enforcement *procedures*" different than those provided for by Chapter 162 but does not authorize it to jettison § 162.09's statutory limitations on penalties. Cross-Motion, p. 9.

Putting aside its reliance on § 162.03 and §162.13, the City alternatively argues that its "Ordinances do not conflict with section 162.09(2)(d)" because statutory fees are *per-day*, whereas the fines prescribed in the Ordinances are *per-violation*." Motion, p. 10. As a result, under certain hypothetical scenarios the fines imposed by the ordinances could turn out to be less than the fines permitted by the statute. In these scenarios the fine imposed by the ordinance would – in the City's opinion – "be consistent with Chapter 162, because it [would] 'not exceed' the fine set forth in § 162.09(2)(d)." Motion, p. 11. Plaintiff responds by pointing out that the statutory fine of \$1,000.00 per day will not "catch up" to the City fine for day one (1) (*i.e.*, the first violation) until day twenty (20), and that the City itself, in enacting the ordinances, recognized the "need for more substantial penalties" than

those provided by the statute in order to deter non-compliance. Cross-Motion, p. 12.

Finally, the City insists that Nichols has no standing to bring this claim because she does not allege that “the challenged fine structure” has been “enforced against” her. Motion, p. 11. The City, however, does not dispute that fact that Nichols is prohibited by the Ordinance from renting her property short-term, or that she is subject to a \$20,000.00 (and the escalating) fine if she does.

#### **IV. ANALYSIS**

##### **A. The City’s Alternative Arguments**

Before addressing the only legitimate issue here, the Court will quickly dispose of the City’s alternative arguments, neither of which need detain it long. First, the City’s claim that its Ordinances do not actually conflict with § 162.09(2)(d) strains credulity. The statute permits a fine of \$1,000.00 per day. A property owner who violates the City’s Ordinance for one day is fined \$20,000.00. If someone violates the code twice by renting another time, again for just one day, the statutory fine is \$5,000.00. The fine imposed by the Ordinance for that one day second offense is \$40,000.00. The Court could go on and on, but it will suffice to say that it is patently obvious the fines a violator is exposed to are markedly different under the statute and ordinances, and the fact that in *some* hypothetical scenario the

statutory fine could amount to more than the fine specified in the ordinance is of no consequence.

Also devoid of merit is the City's argument that Nichols lacks standing to seek declaratory relief because she has not violated the ordinances and been penalized. Plaintiff is a property owner on Miami Beach who has – and wants to continue – leasing her real estate, but she is unable to do so because the challenged ordinances make it illegal. No precedent supports the proposition that she must first break the law and be fined \$20,000.00 before she can challenge its legality. The law is in fact to the contrary, as it should be. *See, e.g., Lambert v. Justus*, 335 So. 2d 818 (Fla. 1976) (property owners had standing to bring “complaint seeking declaratory judgment as to the validity of certain restrictions on the use of their property”). These ordinances are prohibiting Nichols from renting her property *now*, and unlike the situations presented in the precedent cited by the City, this is not a case where a plaintiff is seeking an advisory opinion on a moot academic issue or a question that may *never* arise. *See, e.g., Santa Rosa County v. Admin. Com'n, Div. of Admin. Hearings*, 661 So. 2d 1190 (Fla. 1995) (action seeking declaration as to the constitutionality of certain statutes was moot as parties had resolved their disputes by a “stipulated settlement agreement”); *Apthorp v. Detzner*, 162 So. 3d 236 (Fla. 1st DCA 2015) (action challenging the qualified blind trust statute despite the fact that “no public officers” had ever used the type of trust authorized by the law);

*Florida Dept. of Ins. v. Guarantee Tr. Life Ins. Co.*, 812 So. 2d 459 (Fla. 1st DCA 2002) (action challenging constitutionality of Florida Statute § 627.411 presented no actual controversy because plaintiffs rate filings had never been reviewed or denied “under that provision”).

**B. Does Chapter 162, et. seq. Grant Municipalities the Right to Opt-Out of the Statutory Cap on Fines Imposed by § 162.09**

This brings the Court to the only genuine issue: Does Chapter 162 authorize the City to impose fines greater than those authorized by §162.09? The short answer is no.

**1. Municipality Ordinances are Inferior to, and must Yield to Conflicting State Law**

“[A] municipality cannot forbid what the legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden.” *Rinzler v. Carson*, 262 So. 2d 661, 668 (Fla. 1972). For that reason, “[m]unicipal ordinances are inferior to laws of the state and must not conflict with any controlling provision of a statute.” *Thomas v. State*, 614 So. 2d 468, 470 (Fla. 1993). That does not mean that the state and a municipality may not legislate concurrently. They can. But when a municipality legislates in an area addressed by the legislature, its “concurrent legislation must not conflict with state law.” *Id.*, citing *City of Miami Beach v. Rocio Corp.*, 404 So.2d 1066 (Fla. 3d DCA), *review denied*, 408 So.2d 1092 (Fla.1981). *See also*, *City of Palm Bay v. Wells Fargo Bank, N.A.*, 57

So. 3d 226 (Fla. 5th DCA 2011) (“[a]lthough a municipality has broad home rule powers to enact local ordinances, the ordinances may not conflict with a state statute”) (internal citations omitted).<sup>1</sup>

This long-settled rule of superiority/preemption is derived from the plain text of Article I, Section 18 and Article VIII, Section 2(b) of our Constitution. The first provides that no administrative agency – which the City admittedly is – may impose any penalty “except as provided by law.” Article I, Section 18, Fla. Constitution. The second provides that municipalities “may exercise any power for municipal purposes except as otherwise provided by law.” Article VIII, Section 2(b), Fla. Constitution. These provisions, in tandem with the “Municipal Home Rule Powers Act” codified at Chapter 166 of the Florida Statutes, make clear that a municipality “may enact legislation on any subject upon which the state legislature may act unless expressly prohibited by law.” *Rocio Corp.*, 404 So. 2d at 1068; *City of Venice v. Valente*, 429 So. 2d 1241, 1243 (Fla. 2d DCA 1983) (“... a municipality may not exercise any power for municipal purposes which is expressly prohibited by law”). Local ordinances are “expressly prohibited by law” when they conflict with a state statute, and “must fail when [such] conflict arises.” *Id.* See also *City of Kissimmee v. Florida Retail Fed'n, Inc.*, 915 So. 2d 205 (Fla. 5th DCA 2005) (“[w]hen the

---

<sup>1</sup> Contrary to the City’s argument – raised for the first time in its “Supplemental Memorandum” – this rule is not relaxed merely because a local government exercises its powers pursuant to a Home Rule Charter authorized by Article VII, Section 11(b) of the Florida Constitution. *Florida Retail Fed'n, Inc. v. City of Coral Gables*, 44 Fla. L. Weekly D2089 (Fla. 3d DCA Aug. 14, 2019). Rather, it is “well-established that the Home Rule Amendment must be strictly construed to maintain the supremacy of general laws.” *Id.*

legislature enacts a statute, a local government cannot adopt or enforce an ordinance that conflicts with the statute”); *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008) (“ ... in a field where both the State and local government can legislate concurrently, a county cannot enact an ordinance that directly conflicts with a state statute”); *Hillsborough County v. Florida Rest. Ass'n, Inc.*, 603 So. 2d 587 (Fla. 2d DCA 1992) (“[i]f [a county] has enacted such an inconsistent ordinance, the ordinance must be declared null and void”); *Masone v. City of Aventura*, 147 So. 3d 492 (Fla. 2014) (“... municipal ordinances must yield to state statutes”); *Florida Retail Fed'n, Inc., supra*, n.1.<sup>2</sup>

Recognizing that it cannot credibly challenge the general proposition that local governments may not enact ordinances in conflict with state law, the City argues that Chapter 162 itself grants municipalities a right to opt-out of all its provisions, including § 162.09’s caps on fines. The Court disagrees.

## **2. Chapter 162**

Chapter 162, titled the “Local Government Code Enforcement Boards Act,” is intended to:

... promote, protect, and improve the health, safety, and welfare of the citizens of the counties and municipalities of this state by authorizing

---

<sup>2</sup> The Court notes that in 2011 the legislature decide to preempt the subject matter of short-term rentals by precluding local legislation banning them. See Florida Statute § 509.032(7)(b) (“[a] local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals”). Because the City was grandfathered in the statute, it is not precluded from regulating short-term rentals under principals of general subject matter preemption, which apply when the State “essentially takes a topic or a field in which local government might otherwise establish appropriate local laws and reserves that topic for regulation exclusively by the legislature.” *Phantom of Brevard, Inc.*, 3 So. 3d at 314. But even when an area is not completely preempted, a municipality again may not “enact an ordinance that directly conflicts with a state statute.” *Id.*

the creation of administrative boards with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force in counties and municipalities, where a pending or repeated violation continues to exist.

§ 162.02, Fla. Stat. Ann. The Act grants local government the power to “appoint one or more code enforcement boards” comprised of “residents of the municipality, in the case of municipal enforcement boards, or residents of the county, in the case of county enforcement boards. § 162.05(1)-(2), Fla. Stat. (2019). The Act then establishes an “enforcement procedure” to be followed whenever a code inspector becomes aware of a violation. § 162.06, Fla. Stat. (2019). Section 162.07 of the Act provides for hearings to be conducted by the appointed code enforcement board, and “[i]f the local governing body prevails,” authorizes the board to award “all costs incurred in prosecuting the case before the board and such costs may be included in the lien authorized under s. 162.09(3).” *Id.*

Section 162.09 of the Act – titled “Administrative fines; costs of repair; liens” then caps the fines that may be imposed by a code enforcement board or special magistrate. Section 2(d) – the portion of the Act at issue here – provides:

(d) A county or a municipality having a population equal to or greater than 50,000 may adopt, by a vote of at least a majority plus one of the entire governing body of the county or municipality, an ordinance that gives code enforcement boards or special magistrates, or both, authority to impose fines in excess of the limits set forth in paragraph (a). Such fines shall not exceed \$1,000 per day per violation for a first violation, \$5,000 per day per violation for a repeat violation, and up to \$15,000 per violation if the code enforcement board or special magistrate finds

the violation to be irreparable or irreversible in nature. In addition to such fines, a code enforcement board or special magistrate may impose additional fines to cover all costs incurred by the local government in enforcing its codes and all costs of repairs pursuant to subsection (1). Any ordinance imposing such fines shall include criteria to be considered by the code enforcement board or special magistrate in determining the amount of the fines, including, but not limited to, those factors set forth in paragraph (b).

§ 162.09, Fla. Stat. (2019). This statute is plain and unambiguous, limiting fines to the amounts specified, but allowing enforcement boards to impose “additional fines” to cover *only* enforcement costs and repairs.

Undeterred the clarity of § 162.09’s command, the City again says the caps imposed by this statute are not applicable here because it has elected to opt-out of Chapter 162 altogether. In support of its claimed ability to do so, the City relies upon § 162.13 and 162.03(1) and (2). Section 162.13 provides that:

It is the legislative intent of ss. 162.01-162.12 to provide an additional or supplemental means of obtaining compliance with local codes. Nothing contained in ss. 162.01-162.12 shall prohibit a local governing body from enforcing its codes by any *other means*.

*Id.* (emphasis added). Similarly, § 162.03(1) and (2) provide:

(1) Each county or municipality may, at its option, create or abolish by ordinance local government code enforcement boards as provided herein.

(2) A charter county, a noncharter county, or a municipality may, by ordinance, adopt an *alternate code enforcement system* that gives code enforcement boards or special magistrates designated by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances. A special magistrate shall have the same status as an

enforcement board under this chapter. References in this chapter to an enforcement board, except in s. 162.05, shall include a special magistrate if the context permits.

*Id.* (emphasis added).

Neither of these provisions, as plainly worded, bestow upon local governments authority to opt-out of the caps on fines dictated by § 162.09. The City, however, insists that such a right is embedded in § 162.13, which authorizes a municipality to enforce its code by “means” other than enforcement boards, and § 162.03, which grants municipalities the authority to “adopt an alternate enforcement system.” Application of well settled principles of statutory construction proves this contention wide of the mark.

### **3. Applicable Principles of Statutory Construction**

The first rule of statutory construction is to read the statute, then read it again, for “[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.” *Atwater v. Kortum*, 95 So. 3d 85, 90 (Fla. 2012) (quoting *Holly v. Auld*, 450 So. 2d 217 (Fla. 1984)). As our appellate court recently put it, “[t]he Legislature must be understood to mean what it has plainly expressed,” and when a statute “is clear, certain and unambiguous, the courts have only the simple and obvious duty to enforce the law according to its terms.” *DMB Inv. Tr. v. Islamorada, Vill. of Islands*,

225 So. 3d 312, 317 (Fla. 3d DCA 2017). Statutes must be enforced as written because courts are “without power to construe an unambiguous statute in a way which would extend, modify, or *limit*, its express terms or its *reasonable and obvious implications*. To do so would be an abrogation of legislative power.” *Holly*, 450 So.2d at 219.

Section 162.09’s mandate is no doubt clear and unambiguous. The question then becomes whether the provisions relied upon by the City (§ 162.03 and § 162.13) clearly and unambiguously grant local government the “option” to circumvent that mandate and impose larger fines so long as they use “other means,” or an “alternate code enforcement system,” rather than code enforcement boards. Not surprisingly, Chapter 162 does not define the word “means” or illuminate upon the phrase “alternate code enforcement system.” The Court must therefore look to, and apply, ordinary definitions which may be derived from dictionaries. *See Dudley v. State*, 139 So. 3d 273 (Fla. 2014); *E.A.R. v. State*, 4 So. 3d 614 (Fla. 2009). A simple google dictionary search reveals that the word “means,” when used as a noun, is defined as an “action or system by which a result is brought about,” and is synonymous with “way,” “manner,” “process,” “procedures,” “avenue,” or “course.” Similarly, a “system” is defined as a “mechanism or interconnecting network,” and is synonymous with “arrangement,” and “scheme.” *See* Dictionary.com.

Applying the ordinary meaning of these terms, the Court concludes that § 162.03(2) and §162.13 do no more than give local governments the authority to use methods or procedures other than the code enforcement board protocol authorized by Chapter 162. Neither provision says – or in the Court’s view suggests – that a municipality may impose fines greater than those specified in § 162.09. Rather, the term “other means” contained in § 162.13, and the phrase “alternate code enforcement system” in §162.03(2), refer to “methods,” “ways” or “procedures” that a municipality may use to enforce its code in lieu of the enforcement boards authorized by the Act. *See, e.g., Goodman v. County Court in Broward County, Fla.*, 711 So. 2d 587, 588-589 (Fla. 4th DCA 1998) (section 162.13 grants cities the right to have code violations prosecuted in “county court rather than through the code enforcement board,” as the “City may elect either *method* of prosecution”) (emphasis added). These statutes do not expressly or by reasonable implication grant municipalities the power to “opt-out” of the caps specified in § 162.09. *See Paul v. State*, 129 So. 3d 1058, 1064 (Fla. 2013) (“[w]hen a statute is clear, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction...”).

Even if these statutory provisions were open to alternative interpretations (*i.e.*, ambiguous), the result here would be the same applying other well settled rules of statutory construction. To ascertain legislative intent when a statute is found to be

ambiguous, courts consider a variety of factors “including the language used, the subject matter, the purpose designed to be accomplished, and all other relevant and proper matters. *American Badaraco v. Suncoast Towers V Associates*, 676 So. 2d 502, 503 (Fla. 3d DCA 1996) (citing *American Bakeries Co. v. Haines City*, 180 So. 524, 532 (1938)). The Court also must examine the statute as a “cohesive whole,” *Palm Beach County Canvassing Bd. v. Harris*, 772 So. 2d 1273 (Fla. 2000), so as “to give effect to every clause in it, and to accord meaning and harmony to all of its parts.” *Jones v. ETS of New Orleans, Inc.*, 793 So. 2d 912, 914–15 (Fla. 2001). See also *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992) (‘statute also must be read as a whole with meaning ascribed to every portion and due regard given to the semantic and contextual interrelationship between its parts’).

An examination of Chapter 162 as a “cohesive whole” only further persuades the Court that the legislature did not intend to set strict statutory caps on the amount of fees that may be levied by a municipality for a code violation and then, in the same breath, make those mandatory caps optional. The purpose of Chapter 162 is to improve “the health, safety and welfare of the citizens” by “authorizing the creation of administrative boards with authority to impose administrative fines,” as the legislature determined that procedure would “provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in ....”

§ 162.02 Fla. Stat. (2019). Thus, the *primary* purpose of the statute is to provide local governments a *procedure* available to enforce local law. The Legislature, however, decided to impose a limit on the fines that municipalities such as the City could levy for code violations, regardless of whether the fines are imposed by “code enforcement boards or special magistrates, or both...” § 162.09(2)(d), Fla. Stat. (2019). This statute commands – in plain and clear English – that such “fines shall not exceed \$1,000 per day per violation for a first violation, \$5,000 per day per violation for a repeat violation, and up to \$15,000 per violation if the code enforcement board or special magistrate finds the violation to be irreparable or irreversible in nature.” *Id.*

Given that the principle purpose of the Act is to provide local government with a *procedural* mechanism to enforce local law, the Legislature decided that this authorized procedural mechanism (*i.e.*, the enforcement board protocol) was “an additional or supplemental means of obtaining compliance,” and that local governments were free to enforce codes by “other means,” § 162.13, Fla. Stat. (2019), or – put another way – by adopting “an alternate code enforcement system.” § 162.03(2). These two provisions are simpatico. They give local government authority to use other methods or procedures of enforcement and are consistent with the Act’s substantive provision capping the amount of fines a municipality may levy for a code violation. Put simply, § 162.03, 162.09, and 162.13 are easily

harmonized. *See Woodgate Dev. Corp. v. Hamilton Inv. Tr.*, 351 So. 2d 14 (Fla. 1977) (“.... it is the duty of the courts to adopt that construction of a statutory provision which harmonizes and reconciles it with other provisions of the same act”); *Palm Harbor Special Fire Control Dist. v. Kelly*, 516 So. 2d 249 (Fla. 1987).

Conversely, the City’s argument renders §162.09 completely meaningless. According to the City, the Legislature set strict mandatory caps on the amount local government can fine a citizen for a code violation and then, in the same Act, gave those local governments the authority to avoid them altogether by simply using special magistrates or hearing officers instead of code enforcement boards. *See* § 162.03, Fla. Stat. (2019). This proposition is implausible, as every municipality wishing to do an end-run around the statutory caps will simply “choose” to use an enforcement method other than an enforcement board, rendering § 162.09 subject to being eviscerated by the stroke of a pen. *See, e.g., Johnson v. Feder*, 485 So. 2d 409 (Fla. 1986) (“[w]e are compelled by well-established norms of statutory construction to choose that interpretation of statutes ... which renders their provisions meaningful”).

The City’s argument also is belied by § 162.03(2) itself, which provides that a “special magistrate” (*i.e.*, a non-enforcement board option) shall have the same status as an enforcement board under the chapter.” *Id.* Why then would an enforcement board be bound by the statute’s caps, whereas a special magistrate or

hearing officer would not? There is no conceivable rationale for an interpretation of Chapter 162 that would limit an enforcement board's ability to impose fines to \$1,000.00 per day, while allowing special magistrates or hearing officers to impose any fine authorized by an ordinance, no matter how large, and the City's tortured reading of §162.03 and § 162.13 expands these provisions to say something they simply do not say; namely, that local governments may "opt-out of Chapter 162 altogether" or "opt-out the caps imposed by § 162.09." Had the Legislature intended to grant municipalities those rights, it easily could have said so. It did not, and the Court will not expand § 162.03 and § 162.13 by interpreting them as granting local governments opt-out rights by implication. *See, e.g., Holly, supra* at 450 (courts are "powerless" to extend, modify or limit the terms of a statute).

#### **4. Precedent Applying Chapter 162**

In support of its claim that the statutory caps imposed by § 162.09 are completely optional, the City relies upon two decisions out of our appellate court: *Miami-Dade County v. Brown*, 814 So. 2d 518 (Fla. 3d DCA 2002) and *Verdi v. Metro. Dade County*, 684 So. 2d 870 (Fla. 3d DCA 1996). Neither provide it comfort.

*Brown* involved an appeal of findings made, and a penalty imposed by, a Hearing Officer after Miami-Dade County issued a civil violation notice to a property owner. While the property owner admitted the violation, he "defended on

the ground that he never received any prior warning and that the violation was remedied.” *Brown*, at 518. The circuit court, sitting in its appellate capacity, “reversed the Hearing Officer” because it was “persuaded by its reading of sections 162.06 and 162.09 which appear to require notice and a time-to-cure period.” *Id.* at 519. In the circuit court’s view, the enforcement procedures adopted by the county (Chapter 8CC) collided with these statutory provisions because, unlike the statutes, “Chapter 8CC does not require notice of the violation, nor an opportunity to cure the violation prior to the imposition of the fine.” *Id.*

Granting *certiorari*, our appellate court noted that “Chapter 8CC sets forth the procedure the County must follow in enforcing civil violations,” and does not “require the County to give a grace period for curing the violation ....” *Id.* at 520. Rather, “Chapter 8CC makes it clear that the Code permits imposition of the fine without prior notice and/or an opportunity to first cure the violation.” *Id.* This was permissible because § 162.03 confers on local government the authority to adopt an alternate enforcement system, and the County had done so. *Id.* at 519.

*Brown* is consistent with this Court’s reading of Chapter 162, as the case involved a *procedural* difference between the alternate code enforcement system adopted by the County and the provisions of § 162. The City nevertheless highlights language in *Brown* stating that “Florida Statutes § 162.02, confers on local government the authority to either adopt Chapter 162, or completely abolish Chapter

162 and adopt an alternative code enforcement system.” *Brown* at 519. That language, while admittedly expansive, is complete *obiter dicta*, as the *Brown* court was not called upon to decide the issue presented here. Rather, the narrow issue presented was whether the absence of a notice/opportunity to cure provision in Chapter 8CC conflicted with the procedural requirements of Chapter 162- nothing more. *See, e.g., Myers v. Atl. Coast Line R. Co.*, 112 So. 2d 263 (Fla. 1959) (part of opinion containing “ancillary and nonessential gratuitous statements” which are not necessary to the disposition of the case are “obiter dicta”).

*Verdie* also provides no support for the City’s claimed entitlement to “opt-out” of § 162.09’s statutory caps. The case involved a putative class action “seeking a declaration that jurisdiction to entertain past code violations rested solely with the county court and not administrative hearing officers.” *Verdi*, 684 So. 2d at 872. The plaintiff in *Verdi* argued that Chapter 162 authorized the “creation of administrative proceedings to address only pending or repeat code violations and not past violations” and, as a result, only county courts were empowered to “punish past code violations.” *Id.* Rejecting this claim, our appellate court concluded that “Chapter 162 is not limited solely to compelling pending or repeat violators to comply with the Code,” and that the statute “expressly” conferred upon the County the authority to adopt a “a completely alternative code enforcement system to permit either a code enforcement board or an administrative hearing officer to conduct hearings and

assess fines for code violations.” *Id.* at 873. The Court therefore found “that the County was authorized to enact Chapter 8CC ... to provide administrative hearings before hearing officers for contested code violations. *Id.*

*Verdi*, like *Brown*, did not address the issue presented here, as neither case involved fines levied in excess of those sanctioned by § 162.09. *Brown* simply addressed a procedural difference between the statute and ordinance (*i.e.*, notice/opportunity to cure), and *Verdi* addressed the constitutionality of Chapter 162 and the question of whether, as matter of statutory construction, the Act was limited to addressing “only pending or repeat code violations and not past violations.” *Verdi*, 684 so. 2d at 872. In contrast, the Second District’s decision in *Stratton v. Sarasota County*, 983 So. 2d 51 (Fla. 2d DCA 2008) is (or very close to) a proverbial “red-cow” supporting the Court’s interpretation of the Act.<sup>3</sup>

*Stratton* involved a home that was designed by a famous architect in 1970. The new owner sought to have the home designated a historic landmark—which would have allowed her to make needed repairs. She also sought zoning variances that would have achieved the same purpose. Both applications were denied because “erosion of the shoreline continued, and the house began literally crumbling into the Gulf of Mexico. At that point, because the house constituted a hazard to beachgoers, the County declared the house to be an imminent threat to public safety.” *Id.* at 53.

---

<sup>3</sup> A “red cow” is a term proverbially used to describe a case directly on point, a commanding precedent. See *Corn v. City of Lauderdale Lakes*, 997 F.2d 1369 (11th Cir. 1993).

The County then obtained an emergency demolition order, had the structure demolished, and placed a \$129,315 lien on the property.

Challenging the lien imposed by the County for “payroll expenses” the property owner argued – just as Plaintiff does here—that Chapter 162 dictated which fines, costs, and expenses a city or county can recover as part of a code-enforcement action. *Id.* at 54-55. Since that chapter does not allow for the recovery of a county's payroll costs related to a demolition, the property owner in *Stratton* argued that the County could not recover those expenses. *Id.* at 55 -57. In response, the County argued that it was "relying on its local code provisions rather than the provisions of chapter 162 to collect these payroll expenses," *Id.* at 55, and because it had "created an alternative system of enforcement" it was not bound by the limitations found in Chapter 162. Mot. at 13-14. The question in *Stratton* was therefore identical to the one presented *sub judice*. Does the fact that a city may adopt different code-enforcement procedure than those provided in Chapter 162 also mean that it may impose fines and penalties that exceed the parameters set by the statute?

The *Stratton* court said no, emphasizing that under the Florida Constitution "the County has no authority to impose penalties that are not authorized by law." *Id.* at 55. The court then held that "the County cannot rely on local code provisions to collect these expenses in contravention of the authorized penalties set forth in

chapter 162." *Id.*; see also Op. Att'y Gen. Fla. 2000 -53 (2000) (Section 162.09(2) "establishes a range in which reasonable fines may be assessed" even for cities choosing procedures other than those authorized by Chapter 162). In short, *Stratton* rejected the exact argument that the City is making here, and the case is – in the Court's view – on point (or close enough) and arguable controlling. See, e.g., *Pardo v. State*, 941 So. 2d 1057 (Fla. 2006) (absent "interdistrict conflict, district court decisions bind all Florida trial courts").

## V. CONCLUSION

The City – exercising its police power – decided to ban virtually all short-term rentals on Miami Beach. That is a policy decision the Court may not second guess or interfere with. See Benjamin N. Cardozo, *The Paradoxes of Legal Science*, 125 (1928) (“[w]hen the legislature has spoken, and declared one interest superior to another, a court must subordinate her personal belief to that so declared”); *State v. Ashley*, 701 So. 2d 338 (Fla. 1997) (“... we have said time and again, the making of social policy is a matter within the purview of the legislature—not this Court”). But a municipality exercising its admittedly “broad authority to enact ordinances,” *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006), may not legislate “in conflict with state law.” *Thomas*, supra at 470. As our appellate court put it as recently as this August, “although Florida municipalities are given broad authority

to enact ordinances, municipal ordinances must yield to state statutes. *Florida Retail Fed'n, Inc., supra.*

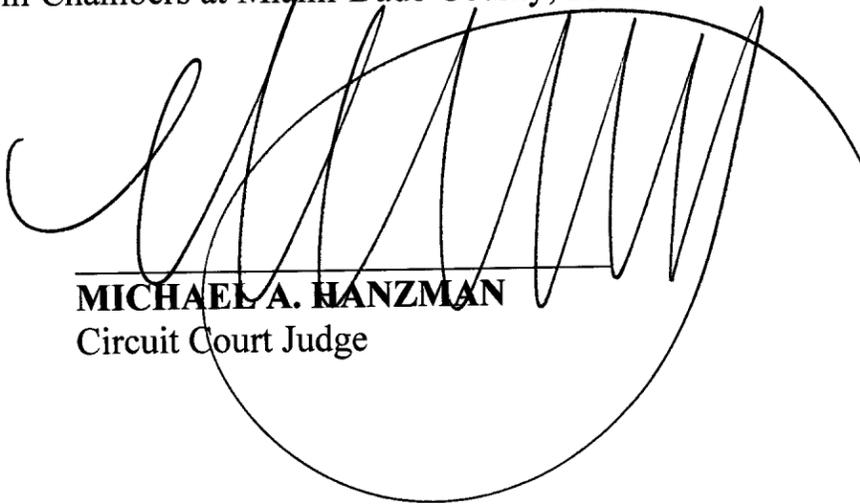
The legislature – in the exercise of *its* police power – clearly and unambiguously imposed caps on the amount local governments may fine citizens for code violations. § 162.09, Fla. Stat. (2019). Those *mandatory* caps provide statewide uniformity and limit the exposure a citizen may face for violating local law. The caps set by the legislature, while hardly *de minimis*, may not in the City’s view be adequate to force (or motivate) Miami Beach’s wealthiest property owners to comply with these ordinances. The City may (or may not) be correct, but that is a matter it must take up in Tallahassee. In the meantime, and unless and until the legislature allows local governments to fine citizens in excess of \$1,000.00 per day for code violations, the City must abide by the command of §162.09. *See Rocio, supra* at 1071 (“... the local ordinances must yield to state statutes if stability in government is to prevail”); *Thomas, supra* at 470 (“[w]hile a municipality may provide a penalty less severe than that imposed by a state statute, an ordinance penalty may not exceed the penalty imposed by the state”).

The ordinances challenged here are in jarring conflict with § 162.09 and are therefore illegal and unenforceable.

For the foregoing reasons, it is hereby **ORDERED:**

1. The City's "Motion for Final Summary Judgment on Count III of the Second Amended Complaint" is **DENIED**.
2. Plaintiff's "Cross-Motion for Summary Judgment on Count III of the Second Amended Complaint" is **GRANTED**. The Court, pursuant to Chapter 86 of the Florida Statutes, declares City of Miami Beach Ordinances § 142-905(b)(5) and § 142-1111 in conflict with State law, illegal and unenforceable.<sup>4</sup> The City is hereby enjoined from enforcing either of said ordinances.<sup>5</sup>

**DONE AND ORDERED** in Chambers at Miami-Dade County, Florida this  
7<sup>th</sup> day of October, 2019.



**MICHAEL A. HANZMAN**  
Circuit Court Judge

Copies furnished to:

Christina Sandefur, Esquire  
Matthew R. Miller, Esquire  
Joseph S. Van de Bogart, Esquire  
Aleksandr Boksner, Esquire  
Enrique Arana, Esquire

---

<sup>4</sup> The Court notes that the City has – in other contexts – routinely imposed fines only up to the limit authorized by § 162.09. *See, e.g.*, City Code Sec. 30-74(d). In doing so it has exercised the right afforded by §162.09(2)(d) due to its population. This appears to be the *only* instance where the City has attempted to impose fines/penalties in excess of those authorized by the statute.

<sup>5</sup> The Court declines the City's invitation to sever the penalty provisions from the remainder of these ordinances, and notes that the City is free to enact replacements so long as they are constitutional and do not conflict with state statutory law.



2020 FLORIDA LEAGUE OF CITIES

# LEGISLATIVE ACTION AGENDA



# TABLE OF CONTENTS

<b>3</b>	.....Introduction
<b>4</b>	.....Florida's Cities: Home Rule = Local Control
<b>6</b>	.....Private Property Rights "Bert Harris Act" Staff Contact: David Cruz
<b>8</b>	.....Sales Tax Fairness Staff Contact: Amber Hughes
<b>9</b>	.....Short-Term Rentals Staff Contact: Casey Cook
<b>14</b>	.....Transportation Funding Staff Contact: Jeff Branch
<b>16</b>	.....Water Resources Staff Contact: Rebecca O'Hara
<b>19</b>	.....Other Issues of Importance
<b>20</b>	.....FLC Legislative Affairs Team
<b>21</b>	.....Key Dates
<b>22</b>	.....Legislative Policy Committees
<b>23</b>	.....FLC Officers

The Florida League of Cities, Inc. was founded on the belief that local self-government is the keystone of American democracy.

# INTRODUCTION

Each year, municipal officials from across the state volunteer to serve on one of the Florida League of Cities' five legislative policy committees. These committees develop the League's Legislative Action Agenda, which addresses priority issues most likely to have a state-wide impact on daily municipal operations and governance.

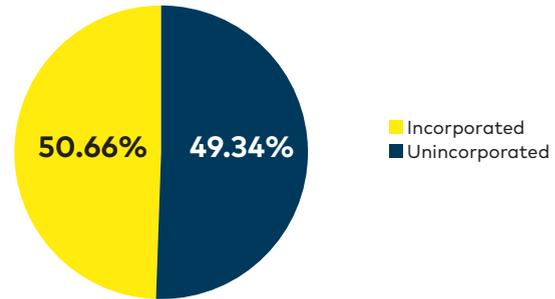
This year, there are five priorities – one developed by each of the policy committees. The priorities were considered and adopted by the full League membership on August 17, 2019.

This document details the five priorities adopted by the FLC membership as described above. The priorities are:

- ▶ Private Property Rights "Bert Harris Act"
- ▶ Sales Tax Fairness
- ▶ Short-Term Rentals
- ▶ Transportation Funding
- ▶ Water Resources

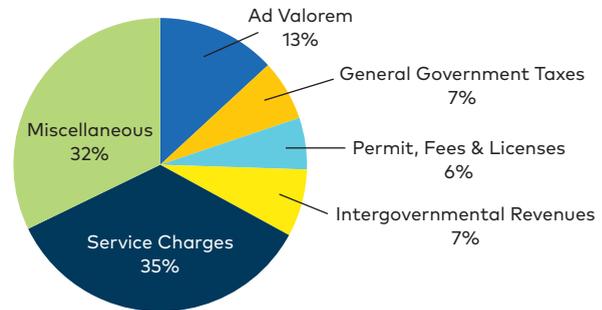
# CITY BUDGETS AT-A-GLANCE

## 2018 FLORIDA POPULATION



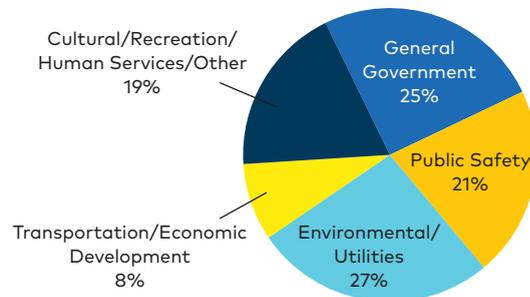
## TOTAL MUNICIPAL GOVERNMENT REVENUES

Local Fiscal Year Ending September 30, 2017



## TOTAL MUNICIPAL GOVERNMENT EXPENDITURES

Local Fiscal Year Ending September 30, 2017





# Florida's Cities HOME RULE = LOCAL CONTROL

## WHAT IS A CITY IN FLORIDA?

Under Florida's Constitution, municipalities are corporations – vested with broad governmental and proprietary powers. Each city is a corporation with a board of directors (council or commission) elected by the people (stockholders) to provide services and self-determination. Each city in Florida has a charter detailing its elections, administrative structure and scope of services. Details are found in policies, ordinances and administrative codes.

PHOTO©GETTYIMAGES

## HOME RULE

Since 1968, Floridians have recognized the need for cities to have Home Rule powers, as included in the Constitution [Article VIII, Section 2(b)] and ratified by the Legislature in 1973. This right gives each city the flexibility to craft its laws specifically to its own unique needs. After all, with 412 cities ranging in size from Marineland (pop. 8) to Jacksonville (pop. 907,093), one size does not fit all. This right means any city can adopt its laws so long as the law doesn't conflict with state or federal law. Cities in Florida are not "of" the state, but "in" the state; it's an important distinction between municipal authority and other local governments.

## WHY ARE CITIES CREATED?

Services and self-determination. Cities provide their residents with essential services, such as water, wastewater, stormwater utilities, police, fire prevention and EMS, road building and maintenance, parks and recreation, land-use codes, planning and code enforcement, animal control, solid waste and recycling, neighborhood services, libraries and cemeteries. Self-determination is the ability to make local decisions locally. Cities are citizen-driven representative democracies with citizen engagement, citizen input and citizen leadership.

## MUNICIPAL SERVICES

Just as no two cities are alike, each city's menu of services is also different. The most important aspect of municipal services is that the services are created to meet the demands of the residents. Each city offers those services desired by its own citizenry.

## CATALYSTS FOR ACTION

A city is a key player in economic development, business retention and regional commerce. City leaders work with county, state and federal resources to help provide new business incubators, workforce placement, affordable housing, educational and technical needs, and public transportation. City leaders also help with redevelopment when an area is faced with blight or struggles to overcome other challenges.

## REVENUES AND EXPENDITURES

Florida's cities receive an average of half of their revenues from user fees and charges for service. The largest sources of tax revenue come from the property tax; state shared revenue, which includes a portion of the state sales tax and gas tax; and the public service tax, also called utilities tax. Cities also rely upon intergovernmental revenue, grants, license fees and permit fees.

## FOCUSED ON EXCELLENCE

Cities are the only optional level of local government in Florida. Cities must provide their services as cost effectively as possible. Councils and commissions know their success often rests upon the bottom line and achieving their key goals with a balance of efficiency, effectiveness and innovation to create a city that residents are proud to call their hometown. ■



# PRIVATE PROPERTY RIGHTS "BERT HARRIS ACT"

## **STATEMENT:**

The Florida League of Cities **OPPOSES** changes to the Bert J. Harris Jr. Private Property Rights Protection Act that do not consider everyone's property rights or that create one-sided lawsuits that shift inordinate financial burdens onto local taxpayers and limit the ability of cities to quickly resolve claims.

## **BACKGROUND:**

Florida is one of the strongest states in the country when it comes to protecting private property owners

from government regulations or takings. From requiring county property appraiser offices to provide a Property Owner Bill of Rights on their websites to having strong laws against eminent domain, Florida has multiple levels of protections for private property owners.

Florida is the only state that provides private property owner protections for government regulations that do not amount to a taking under the U.S. Constitution. The State of Florida enacted the Bert J. Harris Jr. Private Property Rights Protection Act (Harris Act) in 1995, which provides a

PHOTO©GETTYIMAGES

specific process for landowners to seek relief when their property is unfairly affected by government action. Specifically, the Harris Act provides a civil cause of action for private property owners whose current use or vested right in a specific use of real property is "inordinately burdened" by the actions of a governmental entity. The Harris Act has been subsequently amended in 2008, 2011 and 2015 by the Florida Legislature.

The Harris Act authorizes relief, including compensation, to the private property owner for the actual loss to the fair market value of the real property. The burden of proof is on the property owner to show that a governmental entity has inordinately burdened his or her real property. Any Harris claim must be brought within one year of governmental action. The Harris Act defines an inordinate burden as one in which an action of one or more governmental entities has restricted or limited the use of property such that the owner is unable to attain reasonable, investment-backed expectations for the existing use or a vested right in the existing use of the property as a whole, or if the owner is left with uses that are unreasonable such that the owner would permanently bear a disproportionate share of a burden imposed for the public good, which should be borne by the public at large.

During the 2019 session, legislation was introduced to amend the Harris Act that would have had a serious impact on local government operations and could have exposed cities and counties to substantial liability. When faced with a Harris Act claim, cities and counties often choose to settle the claim by offering the aggrieved property

owner a variance to the rule or regulation that is inordinately burdening the property. Settling claims in this method saves taxpayers the expense of paying monetary damages and is encouraged in the Harris Act.

Legislation that failed to pass last session would have required government entities that settle Harris Act claims on residential properties by the use of variance to automatically apply the variance granted to one residential property to all "similarly situated properties."

The bills did not define what a "similarly situated property" was, leaving room for potentially broad problematic applications of the variance without taking into consideration size or density of the residential property, any historical designations or other zoning overlays differing residential properties may have. The legislation also failed to consider that there are legal due process procedures in place to protect the property rights of property owners who may be harmed by the issuance of a variance. The legislative attempts have also sought to remove the current attorney fee provisions from the Harris Act, amending it to prevent a government entity from collecting attorney fees even if they prevail.

During the 2020 session, the League will protect against additional legislative attempts to craft a one-sided Harris Act that does not consider everyone's property rights and will open a floodgate of lawsuits against municipalities when these issues can and should be resolved through the current Bert Harris Act provisions. ■

A close-up photograph of a hand holding a gold credit card over a laptop keyboard. The image is split vertically by a blue semi-transparent overlay on the left side. The text 'SALES TAX FAIRNESS' is written in white, bold, sans-serif font on the blue overlay. A thin white horizontal line is positioned below the text.

# SALES TAX FAIRNESS

PHOTO@GETTYIMAGES

## STATEMENT:

The Florida League of Cities SUPPORTS legislation to reform Florida's sales and use tax laws that apply to online/e-commerce sales from out-of-state retailers. Changes are needed to ensure in-state retailers are treated equitably.

## BACKGROUND:

Forty-five states and the District of Columbia levy taxes on the sale of goods and certain services, including those sold remotely. Florida's sales and use tax is a 6 percent levy on retail sales of most tangible personal property, admissions, transient lodgings, commercial rentals and motor vehicles. Additionally, Florida has nine types of local discretionary sales surtaxes (also referred to as local option sales taxes) that are currently authorized in law and represent potential revenue sources for counties, municipalities and school districts. The local discretionary sales surtaxes apply to all transactions subject to the state tax imposed on sales and use tax. The local discretionary sales surtax rate varies from county to county, depending on the particular levies authorized in that jurisdiction.

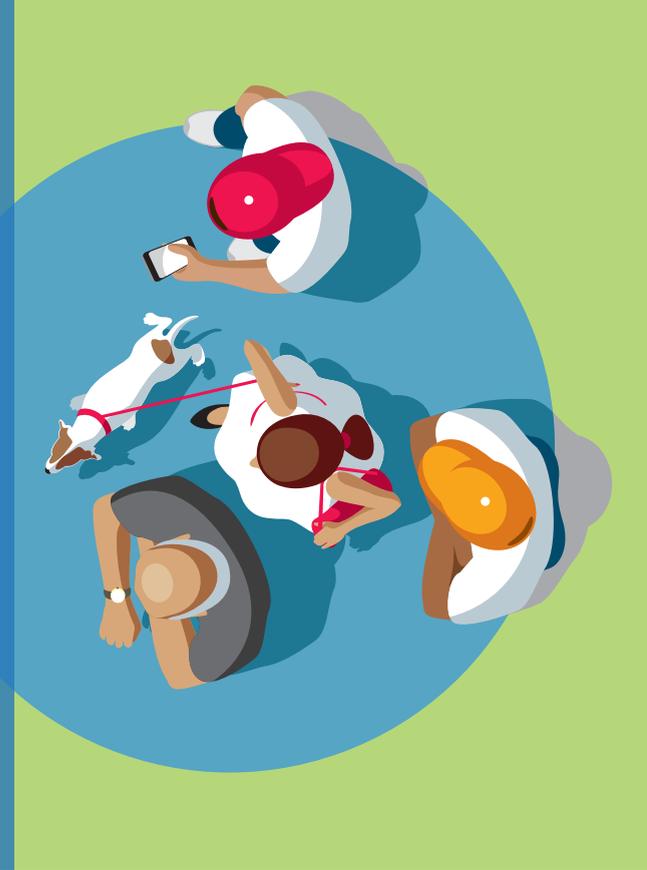
On June 21, 2018, the U.S. Supreme Court issued an opinion in *South Dakota v. Wayfair*, overturning its earlier precedents in *National Bellas Hess and Quill*, and eradicated the decades-old "physical presence" requirement for sales and use tax nexus. The case centered on a South Dakota law that imposes sales tax collection obligations on certain remote sellers, based on the dollar amount or volume of sales into the state. This "economic nexus" case impacts thousands of state and local jurisdictions across the United States that impose a sales or use tax.

The issue of fairness is an important one. Local businesses, which sponsor youth sports teams or help sponsor local fireworks displays or other activities for their communities, are forced to collect and submit sales taxes on items they sell in their communities. The cost of these goods then can be higher because the out-of-state or international seller is not collecting or remitting sales taxes. This gives these "foreign" businesses an unfair advantage. Local businesses ultimately become nothing more than local showrooms for goods ultimately bought online. ■

---

**Florida is one of only two states that levy sales tax that has not enacted an economic nexus or similar remote sales tax policy.**

Source: Sales Tax Institute



# SHORT-TERM RENTALS

## STATEMENT:

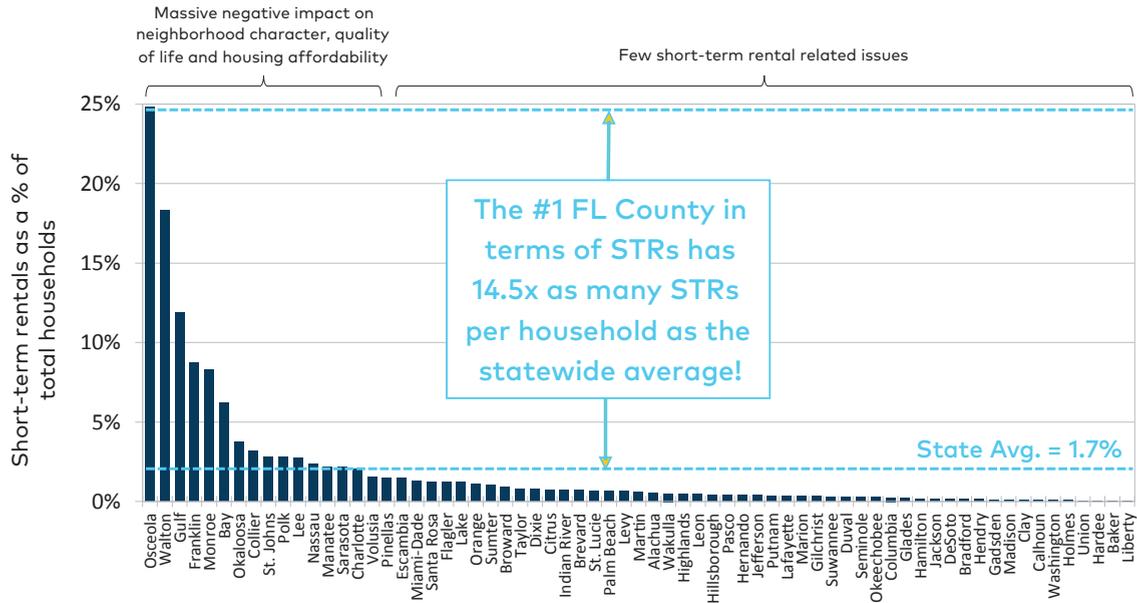
The Florida League of Cities SUPPORTS legislation providing for a collaboration between the Florida Department of Business and Professional Regulation and cities to ensure that short-term rental properties abide by state and local regulations and be properly licensed and insured, are complying with state and local taxation requirements, and comply with industry-accepted safety practices. The Florida League of Cities SUPPORTS legislation clarifying that existing, grandfathered municipal short-term rental ordinances can be amended if the changes being made are equal to or less restrictive than the current regulation in place.

## BACKGROUND:

In 2011, the Florida Legislature prohibited cities from regulating short-term vacation rentals. A short-term vacation rental is defined as a property that is rented more than three times a year for less than 30 days at a time. The legislation passed in 2011 included a provision that "grandfathered" any ordinance regulating short-term rentals prior to June 1, 2011. Since that time, a number of cities, both "grandfathered" cities and those that did not have an ordinance in place, have experienced problems with these properties. The effect of the 2011 law is that two separate classes of cities were created respective to short-term rentals: those with Home Rule authority and those without.

GRAPHIC©GETTYIMAGES

## RATIO OF SHORT-TERM RESIDENTIAL RENTALS TO PERMANENT HOUSEHOLDS



Source: Host Compliance; Florida Department of Business and Professional Regulation.

In 2014, the Legislature passed SB 356 (Thrasher), which diminished the preemption on short-term rentals. The 2014 law allows local governments to adopt ordinances specific to these rentals so that they can address some of the noise, parking, trash and life-safety issues created by their proliferation in residential neighborhoods. Unfortunately, SB 356 left in place existing statutory language stating that cities cannot “prohibit” short-term rentals or regulate the duration or frequency of the rental.

Those cities fortunate enough to have had an ordinance in place prior to the 2011 preemption are still allowed to regulate short-term rentals, but the question remains whether these ordinances will continue to be valid if amended. Some city

attorneys believe these ordinances are “frozen” and any future amendments would cause a loss of the “grandfather.” The problem with this is twofold. First, with the rise of popular rental websites like Vrbo and Airbnb making it easier to advertise and rent these properties, the number of properties used as short-term rentals in Florida has exponentially increased in the last four years. Second, as a result of this enormous growth in the rental market, the scope of the problem has changed and ordinances adopted before 2011 may no longer be effective.

It is important to note that many of Florida’s larger cities (with a larger professional staff) fell into the grandfathered category. They have retained the ability to regulate these properties through zoning and may have duration and frequency requirements.

Some of these cities may want to amend their ordinances to adjust to a changing problem. They are reluctant to do so out of fear of losing their existing ordinance and with it their Home Rule authority relating to short-term rentals. Recognizing that the ordinances on the books are no longer effective, cities want the ability to come up with solutions that work for their respective community, but because of the potential loss of the “grandfather,” they are unable to do so. It is important to note that any potential amendments to existing ordinances would be vetted through numerous public hearings that allow neighboring homeowners, short-term rental owners, property managers and local businesses to weigh in on proposed legislation.

Cities without short-term rental regulations in place prior to June 1, 2011, have had their zoning authority stripped and are now seeing these rentals completely overtaking residential neighborhoods. Long-time residents are moving out as a result, and the residential character of traditional neighborhoods is slowly being destroyed.

The impacts of problematic short-term rentals on neighboring residents are felt in a number of ways:

### **The Hotel Next Door – Commercial Activity in Residential Neighborhoods**

Houses that sleep 26 people are now present in what were once traditional neighborhoods. Because of the inability to regulate the duration of a renter’s stay, these houses could experience weekly, daily or even hourly turnover. Obviously, the constant turnover of renters creates a number of issues for cities and neighboring property owners. Prior to the preemption, local governments were able to regulate this activity through zoning. Short-term rentals have

become increasingly popular in the last five years. Because a city cannot “prohibit” these properties, they are powerless to exclude them from residential neighborhoods. As a result, investors, many of whom are located out of state or even in a different country, have purchased or built single-family homes with the sole intent of turning them into short-term rentals.

Cities use zoning as a tool to prepare for their future growth and also use it to control where commercial and residential properties are located. Hotels have different infrastructure needs than single-family residential properties. As residential neighborhoods are developed, the infrastructure installed is designed for the future use of the properties. Many neighborhoods have infrastructure in place with capacity for up to eight people per house. Now there are houses in these very same neighborhoods that sleep more people than the number originally planned for, placing a significant strain on existing infrastructure. Commercial properties like bars, hotels and restaurants typically need more parking than a single-family property, as well as have different operating hours and experience greater noise levels. The current law removes important land use and zoning tools that will impact how a city plans for future growth and levels of service.

### **Noise Complaints**

In areas where short-term rentals are situated, many neighboring residents complain of the noise generated by the vacationing renters next door. When people go on vacation, often their behavior changes. They may stay awake later, consume more alcoholic beverages throughout the day or participate in recreational activities that they would not participate in while at their own homes, such as swimming at midnight with music blaring. For those homes located near water, a lake or the ocean, it

is important to note that sound travels easily over water – and residents located hundreds of yards away may be the ones calling and complaining to the police and their local elected officials.

Some cities have noise ordinances, but these have proved problematic to enforce. One such example is Lighthouse Point. Its ordinance requires sustained noise over a certain decibel threshold for 10 minutes. Many times after the police arrive at a residence, the noise dies down. These renters may leave the next day with new ones replacing them. The new renters are often unaware of the noise ordinance or past complaints and may cause the same problems. The out-of-state property owner may not even be aware of the problems created by their renters and with the constant turnover. The problem ends as one renter leaves and begins again as new renters arrive. This causes a significant drain on law enforcement resources. **When a law enforcement officer is called to respond to noise complaints, one less officer is on the street either preventing or solving crimes.**

### **Impacts on Emergency Response Times**

Many short-term rentals are located in single-family neighborhoods. In most cases, the driveway was built to accommodate two or three vehicles. When you now have a renovated house that acts as a small hotel, there will be more than three cars needed to get these renters to the property. This leads to cars that are parked on the street, making it difficult for emergency vehicles to respond to emergencies and causes increased response times in these neighborhoods. Cities have begun to adopt ordinances creating parking standards for short-term rental properties. Unfortunately, these ordinances only solve the parking issue but fail to address any of the other issues created by this commercial activity in residential areas.

### **Revenue Issues**

As stated earlier, a property rented more than three times a year for less than 30 days at a time meets the vacation rental definition and should be licensed by the state. The Department of Business and Professional Regulation (DBPR) is tasked with investigating unlicensed vacation rentals but lacks the resources needed to fully investigate every complaint. Unlicensed vacation rentals could be costing Florida millions of dollars each year from lost licensing revenue.

Licensed short-term vacation rentals and hotels are also required to charge a sales tax to renters and then remit this back to the state. Many licensed and unlicensed vacation rentals are not doing this. The Florida Department of Revenue (DOR) has limited resources and cannot adequately monitor these transactions, costing the state millions of dollars in lost revenue. Similarly, short-term rental owners in some counties are required to collect and remit the tourist development tax to the state. DOR is often unable to track down the vacation rental owners who are not paying the tourist development tax.

The Legislature began the conversation on short-term rentals in 2014, and the Florida League of Cities supported both HB 307 (Hutson) and SB 356 (Thrasher). The bills were a step in the right direction, but they only partially restored Home Rule to Florida's cities. Cities are still prevented from regulating the duration and frequency of the rentals, and local zoning does not apply to these properties. Without the ability to regulate these key areas, local governments will not be able to adequately address the problems associated with these properties. ■



# TRANSPORTATION FUNDING

---

## **STATEMENT:**

The Florida League of Cities SUPPORTS legislation that will provide local governments with new and innovative revenue options and resources to finance critical infrastructure, maintenance and construction needs to meet the ever-changing transportation demands driven by dramatic population growth and new technology (autonomous vehicles) throughout Florida.

## **BACKGROUND:**

Transportation infrastructure is paramount to the prosperity of all cities. It greatly affects quality of life by influencing peoples' decisions about where

to live, work and spend their free time. For more than 60 years, the federal government has helped states pay for highway repair and construction through the Highway Trust Fund (HTF), which relies primarily on federal gas tax revenue. But in recent years, inflation and the growth in the number of both electric and more fuel-efficient gas-powered vehicles means that drivers are buying less gasoline and paying less gas tax.

Declining gas tax revenue is not only affecting solvency of the HTF but also the State Transportation Trust Fund (STTF) in Florida. Recently, Florida economists have predicted \$120 million

PHOTO©GETTYIMAGES

decline in funding going into the STTF over the next five years.

To compound the problem, the federal gas tax was last increased in 1997, the state gas tax in 1943, the county gas tax in 1941 and the municipal gas tax in 1971. The Fuel Sales Tax and the State Comprehensive Enhanced Transportation System Tax, which are the State of Florida's portion of the motor fuel tax rates, are adjusted once a year to account for inflation. A major portion of transportation funding flows to municipalities through county, state and federal taxes on gasoline. While the federal, state and county governments have a variety of tools available to address transportation funding, municipalities

have limited revenue options for funding transportation projects. For example, charter counties may currently hold a referendum on whether to impose up to a 1 percent sales tax to fund transportation infrastructure projects. Giving municipalities the same transportation revenue options and/or indexing their local motor fuel tax rates are ways to provide greater flexibility to fund their unique transportation needs.

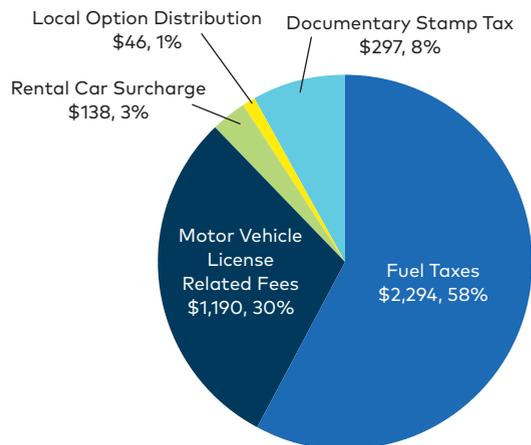
With over 126 million visitors each year and more than 900 people moving to Florida each day, the state's transportation infrastructure is rapidly declining. Our roads and bridges are getting older and falling into disrepair, costing more to maintain and improve. Some of these increased costs are directly attributable to technological advancements that are necessary to implement a "smart transportation infrastructure" where train stations, bus stops, airports, and car- and bike-sharing stations become integrated parts of one big open high-speed connected communications network.

Additionally, Florida's crumbling infrastructure and long traffic drive times affect public safety. Roads filled with potholes or instances where traffic is at a standstill directly impact the ability of police and firefighters to respond to accidents or crime scenes.

Transportation projects are often the catalyst for economic development and the result of growth within a community. Florida's municipalities need a transportation program that adequately funds our state's transportation needs, takes a smart approach to all forms of transportation, and provides local governments with the certainty they need for planning and funding transportation projects. ■

### STATE TAXES AND FEES DEPOSITED IN STATE TRANSPORTATION TRUST FUND FISCAL YEAR 2018

(Amount in Millions)



**Source:** Transportation Revenue Estimating Conference (12/06/18), Documenting Stamp Tax Revenue Estimating Conference (12/18/18).

---

# WATER RESOURCES



PHOTO@GETTYIMAGES

## STATEMENT:

Water is an essential public asset that benefits Florida's economy, residents, visitors and environment. Presently, Florida spends less than 1/10 of 1 percent of its entire state budget on water supply and water quality improvements.

The Florida League of Cities SUPPORTS legislation to address Florida's water quality crisis and water supply deficiencies that:

- ▶ provides for an annual assessment of the state's water infrastructure and water quality improvement needs at the state, regional and local levels.
- ▶ establishes a framework for a state water infrastructure and water quality funding program that includes objective criteria tied to beneficial returns on investment, sustainable utility prac-

tices and intergovernmental coordination.

- ▶ identifies potential sources of funding or financing.

## BACKGROUND:

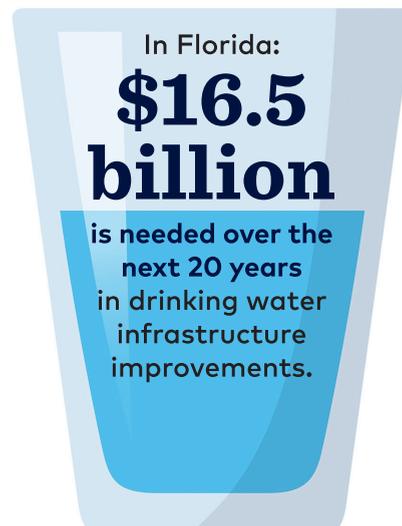
- ▶ Water is an essential public asset that benefits Florida's economy, residents, visitors and environment.
- ▶ Florida's ability to meet its future water needs exceeds available supply and infrastructure.
- ▶ As much as \$48.71 billion may be needed over the next 20 years to meet needs for drinking water and wastewater, flood control, nutrient pollution, Everglades restoration, and beach and inlet erosion.
- ▶ The State of Florida should obtain an accurate assessment of current and future water infrastructure needs, identify potential funding

# \$69 billion

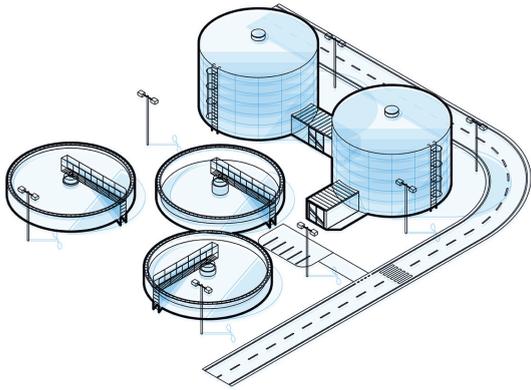
in coastal property in Florida that is not at risk today could flood at high tide by 2030



**Source:** "Come Heat and High Water: Climate Risk in the Southeastern U.S. and Texas," July 2015, Risky Business Project.



**Source:** EPA Drinking Water Infrastructure Needs Survey and Assessment - Fifth Report to Congress, September 2015.



**\$21.8 billion**

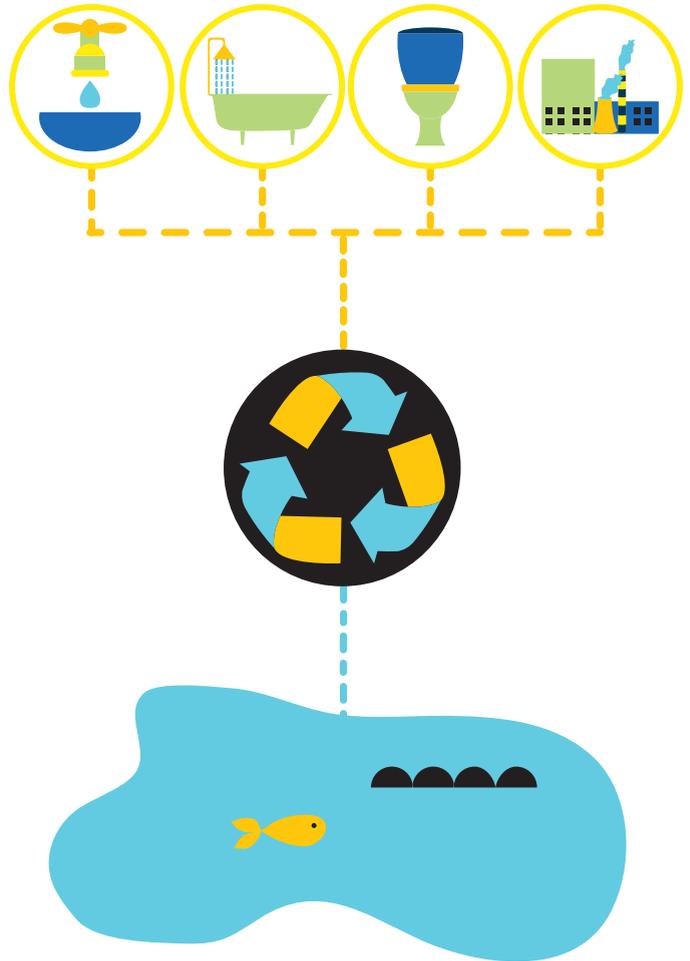
is needed for wastewater infrastructure improvements by 2020

Source: EPA 2015 Drinking Water Infrastructure Needs Survey and Assessment, Florida.

sources, and develop a long-term water supply and water quality funding program based on identified needs, objective criteria, and intergovernmental partnerships and coordination.

- ▶ Legislation is needed to direct the Department of Environmental Protection to develop a comprehensive and need-based assessment of the state’s water resources, including an assessment of the funding needed to meet current and future demands.
- ▶ Legislation should also identify potential funding sources for a long-term, dedicated and recurring source of state funding for water supply and water quality improvement projects and measures.
- ▶ Legislation should establish the framework for a water supply infrastructure and water quality improvements grant program with local match requirements and transparent funding criteria. ■

There are over **1,700** water body segments throughout Florida impaired for water quality



Source: Department of Environmental Protection 2018 Comprehensive Verified List.

# OTHER ISSUES OF IMPORTANCE

## Affordable Housing

### STATEMENT:

The Florida League of Cities SUPPORTS legislation that requires all monies from the Sadowski State and Local Housing Trust Fund be used only for Florida's affordable housing programs.

## Annexation

### STATEMENT:

The Florida League of Cities SUPPORTS legislation that facilitates the municipal annexation of unincorporated areas, while protecting private property rights and respecting municipal boundaries.

## Cybersecurity

### STATEMENT:

The Florida League of Cities SUPPORTS legislation dedicating state resources for the development and enhancement of municipal cybersecurity by providing funding for technical assistance, threat assessments, employee training, infrastructure improvements and data protection, including the protection of exempt and confidential information such as law enforcement personnel information and building plans for government and recreational buildings and infrastructure.

## Digital Divide

### STATEMENT:

The Florida League of Cities SUPPORTS legislation that reduces the digital divide and expands broadband internet access to all underserved areas of the state. This includes:

- ▶ funding a study to identify areas of Florida that are underserved by traditional broadband providers.
- ▶ removing statutory barriers for local governments

to provide telecommunication services and open competition for affordable Internet service.

- ▶ increasing public funding for construction of broadband infrastructure.

## Local Business Tax Protection

### STATEMENT:

The Florida League of Cities SUPPORTS legislation that protects general revenues collected from the local business tax. These revenues are used to provide essential municipal services such as public safety and constructing and maintaining roads and bridges, public parks and open spaces. Maintaining a diversified revenue base strengthens the fiscal stability of local governments and improves their ability to serve citizens and businesses and protect the public.

## Medical Marijuana

### STATEMENT:

The Florida League of Cities SUPPORTS legislation restoring municipal authority to regulate medical marijuana facilities within municipal boundaries.

## Resiliency

### STATEMENT:

The Florida League of Cities SUPPORTS the Office of Resilience and Coastal Protection and will SUPPORT legislation to fund and coordinate state resiliency programs with those of local governments.

## Smoke-Free Zones in City Parks

### STATEMENT:

The Florida League of Cities SUPPORTS legislation authorizing cities to establish smoke-free zones within the boundaries of a city park. ■

# 2020 FLORIDA LEAGUE OF CITIES LEGISLATIVE AFFAIRS TEAM



## SCOTT DUDLEY

Legislative Affairs  
Director; Florida League  
of Mayors Executive  
Director

[sdudley@flcities.com](mailto:sdudley@flcities.com)

- State and Federal Legislative Issues
- Governmental Relations



## JEFF BRANCH

Legislative Advocate  
[jbranch@flcities.com](mailto:jbranch@flcities.com)

- Affordable Housing/Foreclosures
- Building Codes/Construction
- Charter Counties
- Charter Schools
- Emergency Management
- Homelessness/Mental Health
- Special Districts
- Transportation/Highway Safety/Aviation
- Veterans Affairs



## CASEY COOK

Senior Legislative  
Advocate; Florida City  
and County Management  
Association Executive  
Director

[ccook@flcities.com](mailto:ccook@flcities.com)

- Economic Development
- Gaming
- Medical Marijuana
- Ordinance/Code Enforcement
- Procurement
- Public Records/Public Meetings
- Public Safety



## DAVID CRUZ

Legislative Counsel  
[dcruz@flcities.com](mailto:dcruz@flcities.com)

- Annexation
- Community Redevelopment
- Eminent Domain
- Growth Management
- Land Use
- Property Rights
- Tort Liability/Sovereign Immunity
- Insurance – Except NFIP
- Workers' Compensation



## AMBER HUGHES

Senior Legislative  
Advocate

[ahughes@flcities.com](mailto:ahughes@flcities.com)

- Finance and Taxation
- National Flood Insurance Program
- Personnel and Collective Bargaining
- Retirement/Pension Issues
- Revenues and Budgeting
- Telecommunications



## REBECCA O'HARA

Deputy General Counsel  
[rohara@flcities.com](mailto:rohara@flcities.com)

- Energy
- Environmental
- Ethics and Elections
- General Utilities
- Rights-of-Way
- Solid Waste
- Stormwater
- Water Quality/Wastewater
- Water Supply/Policy



## ALLISON PAYNE

Manager, Advocacy  
Programs & Federal  
Affairs

[apayne@flcities.com](mailto:apayne@flcities.com)

- Local/Regional Leagues
- Key Contact Program
- Advocacy Programs/Regional Teams
- Federal Affairs/NLC Liaison



## TARA TAGGART

Legislative Policy  
Analyst

[ttaggart@flcities.com](mailto:ttaggart@flcities.com)



## MARY EDENFIELD

Legislative Coordinator  
[medenfield@flcities.com](mailto:medenfield@flcities.com)

- Legislative Policy Committees
- Legislative Action Days



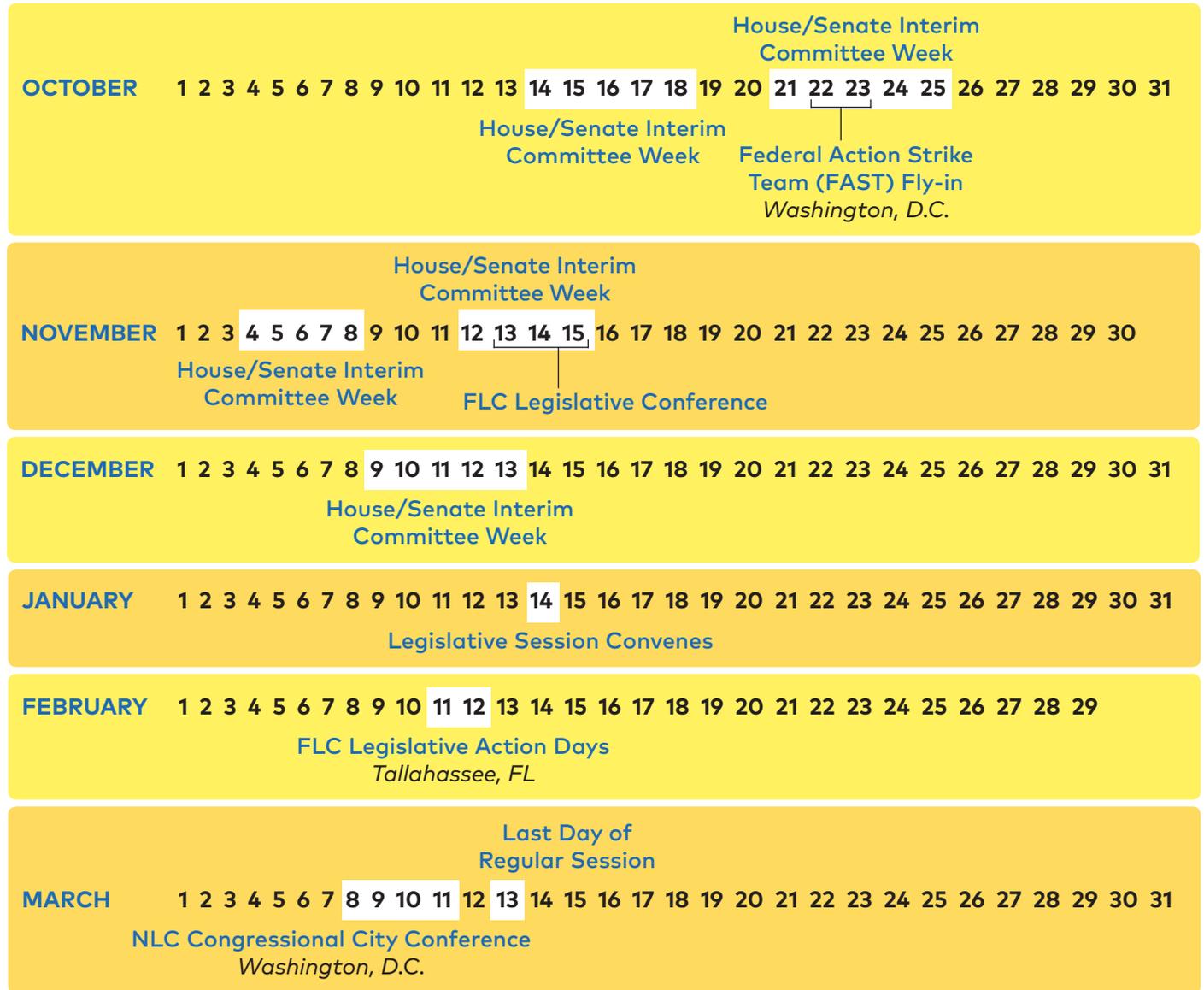
## KATHERINE DUNN

Administrative/  
Legal Assistant

[kdunn@flcities.com](mailto:kdunn@flcities.com)

# 2019-2020 KEY DATES

(Dates subject to change)



# LEGISLATIVE POLICY COMMITTEES

The following city officials served as chairs and vice chairs of the Florida League of Cities legislative policy committees. We thank them and the hundreds of municipal officials who participated in the development of these legislative priorities.

## FINANCE, TAXATION AND PERSONNEL

Chair: **Vice Mayor Paul R. Shalhoub**, Town of Lake Clarke Shores

Vice Chair: **Council Member Robert Yaffe**, Town of Bay Harbor Islands

## LAND USE AND ECONOMIC DEVELOPMENT

Chair: **Councilwoman Jolien Caraballo**, City of Port St. Lucie

Vice Chair: **Mayor William (Bill) Capote**, City of Palm Bay

## MUNICIPAL ADMINISTRATION

Chair: **Council Member Dan Saracki**, City of Oldsmar

Vice Chair: **Vice-Mayor Kimberly Glas-Castro**, Town of Lake Park

## TRANSPORTATION AND INTERGOVERNMENTAL RELATIONS

Chair: **Councilman Elvis R. Maldonado**, City of Homestead

Vice Chair: **Commissioner Gigi Simmons**, City of Gainesville

## UTILITIES, NATURAL RESOURCES AND PUBLIC WORKS

Chair: **Deputy Mayor Stuart Glass**, Town of Indialantic

Vice Chair: **Councilman Rick Williams**, City of Cape Coral

The Action Agenda reflects the priorities of 412 municipalities, as prepared by the Florida League of Cities' five legislative policy committees and adopted by the full membership at the League's 93rd Annual Conference, August 17, 2019, in Orlando.

# 2019-2020 OFFICERS



## **PRESIDENT**

**Council Member Isaac Salver**  
Bay Harbor Islands



## **FIRST VICE PRESIDENT**

**Commissioner Tony Ortiz**  
Orlando



## **SECOND VICE PRESIDENT**

**Mayor Randall P. Henderson Jr.**  
Fort Myers

The Florida League of Cities is the united voice for Florida's municipal governments. Its goals are to serve the needs of Florida's cities and promote local self-government.

Florida's city officials formed as a group of municipal governments for the first time in 1922. They wanted to shape legislation, share the advantages of cooperative action, and exchange ideas and experiences. Growing from a small number of cities and towns, our membership now represents 412 cities, towns and villages in the Sunshine State.

The League is the premier provider of many products and services developed especially for Florida's cities. Our strength and success are dependent upon the support and participation of our members.



For more information on the League's legislative initiatives, please contact:

**Florida League of Cities**  
**P.O. Box 1757**  
**Tallahassee, FL 32302-1757**  
**Phone: (850) 222-9684**  
**[floridaleagueofcities.com](http://floridaleagueofcities.com)**



**VILLAGE OF BISCAYNE PARK**  
**Village Commission Agenda Report**  
**REGULAR MEETING**

**Item # 11.b**

---

**TO:** Honorable Mayor & Members of the  
Biscayne Park Village Commission

**FROM:** Dan Samaria

**DATE:** November 5, 2019

**TITLE:** Discussion of Mayor – Change of Leadership

---

**Recommendation**

According to our Charter – The responsibility of the Mayor is minimum, it is to run the meetings, sign checks and represent the village at official functions.

It is NOT the responsibility of the Mayor to interfere with Village Administration, which the Mayor has done on many occasions. Which is explained in the background.

And therefore, I am recommending we have a vote of **no confidence** and hopefully a change of leadership.

**Background**

Month after month Village residents have repeatedly appeared before the Commission, expressing concerns over the role that the Mayor has adopted, which is seen as exceeding the authority of the office as described in the Village Charter. There has been no response, or even acknowledgement, from the Commission on these concerns.

Every elected Commissioner asked for voters' support, promising transparency and promising to listen to the residents. Yet that does not appear to be what is taking place today. The Village residents deserve answers to the concerns they raise. At minimum this public discussion should include the Village Charter, the roles and limitations of the Commission and Manager, the failings of the current leadership, and potential changes that may be implemented.

**Resource Impact N/A since done during a regular commission meeting**

**Attachment**

None.

---

Prepared by: Dan Samaria

November 5, 2019  
Item # 11.b



**VILLAGE OF BISCAYNE PARK**  
**Village Commission Agenda Report**

**Item # 11.c**

**REGULAR MEETING**

---

**TO:** Mayor & Members of the  
Biscayne Park Village Commission

**FROM:** Dan Samaria, Commissioner

**DATE:** November 5, 2019

**TITLE:** Village Attorney Invoices and Future Role

**Background**

The Village Charter describes the qualifications and role of the Village Attorney stating:  
Section 3.02. - Village Attorney.

(A) The Commission shall appoint an attorney who is licensed to practice law in the State of Florida to serve as Village Attorney (the "Attorney") and who shall serve at the pleasure of the Commission. The Attorney shall act as the legal advisor to, and attorney and counselor for, the Village and all of its officers in matters relating to their official duties under such terms, conditions and compensation as are consistent with this Charter and as may be established. The Commission at any time may remove the Attorney as provided in Section 3.03 below. (B) When requested by the Commission or Manager, the Attorney shall: (1) prepare all contracts, bonds and other instruments in writing or shall endorse on each his/her approval of the form, language and execution thereof; (2) prosecute and defend, for and on behalf of the Village, all complaints, suits and controversies in which the Village is a party; (3) furnish his/her opinion on any question of law relating to their respective powers and duties; and (4) perform such other professional duties as may be required by ordinance, by resolution of the Commission, by this Charter, or such as are prescribed for village attorneys under the general laws of the State, not inconsistent with this Charter. (C) No contract with the Village shall be binding upon the Village until the Attorney has approved such contract for form, language and execution.

By Resolution 2018-23 on July 30, 2018, the Commission approved the engagement and fee agreement with John R. Herin, Jr., (as the main point of contact and lead attorney pursuant to the proposal) and the firm of Gray Robinson, P.A. ("GR"), a copy of which is attached to this Agenda Item. The agreement specifies,

- a) "In the even that two attorneys attend a Commission meeting or [GR's] convenience, the Village will not be double billed for their attendance." (Emphasis added.)

- b) "We will not bill the Village for routine phone calls or for travel time to and from the Village, and provide the services set forth in our proposal free of charge."

At a special meeting held February 12, 2019, the Commission discussed GR's request for the Village to remain as a client with GR, move to John Herin's new firm, or make a third selection for continuing representation. Discussions and presentations since that meeting led the Commission to decide on staying with GR as Village Attorney.

In the last few months Village residents have highlighted categories of GR billings that are out of line with past experience and contrary to the retainer agreement. Specifically, with regard to preparation for and attendance at Commission meetings, GR billings include "double billed" and triple billed for service, in the following instances, causing excessive billing of at least \$8,220+ (bundled and vague entries preclude calculation of a definitive amount):

- 1) March 18, 2019 – 3 GR attorneys billed preparation for meeting: JCM 1.9 hr, RR 2.7 hr, THL 1.1 hr = 5.7 hours / \$1,282.50 total.
- 2) March 19, 2019 – 2 GR attorneys prep and attend meeting: JCM 5.2 hr, RR 3.6 hr = 8.8 hours / \$1,980. total.
- 3) April 1, 2019 – 3 GR attorneys on teleconference re meeting agenda: JCM .6 hr, RR .9 hr, AP .9 hr = 2.4 hours / \$540 total.
- 4) April 2, 2019 – 3 GR attorneys prep and attend meeting: JCM .6 hr, RR four entries combined for 5.1 hr, AP 5.4 hr = 11.1 hours / \$2,497.50 total.
- 5) April 16, 2019 – 3 GR attorneys addressing GoToMeeting / Zoom issues: JCM 1.4 hr, RR 1 hr, AP 1.4 hr = 3.8 hours / \$855 total.
- 6) April 18, 2019 – 2 GR attorneys participating in conference call: JCM 2.5 hr, RR 1.2 hr = 3.7 hours / \$832.50 total.
- 7) April 26, 2019 – 3 GR attorneys participating in conference call: JCM 1.6 hr, RR 1.1 hr, AP 1 hr = 3.8 hours / \$855 total.
- 8) May 7, 2019 – 3 GR attorneys prep and attend meeting: JCM 6.5 hr, RR 6.5 hr (of which 2.7 is no charged), AP 6.7 hrs = 20.3 hours / (adjusted for no charge) \$3,937.50 total.
- 9) May 13, 2019 – 2 GR attorneys on conference call: JCM .9 hr / RR .6 hr = 1.5 hours / \$337.50 total.

Other GR billing categories of concern include:

- 1) Exclusive contact w/Mayor of undisclosed substance. Details of the Mayor's consultations with the attorney need to be made public.

2) Unauthorized research and drafting of documents, particularly drafting of an ordinance concerning boards.

### **Recommendations**

I ask the Commission to consider and support the following recommendations, as well as others that may develop in discussion:

- 1) Task the Manager or his designee (possibly, the Finance Director) to prepare an analysis to determine the credit due to the Village for overcharges by GR.
- 2) Consider withholding any further payments until an appropriate credit is accomplished.
- 3) Going forward, elected officials must follow the Charter and Code when dealing with the Administration and the Attorney. Since the Manager-Commission form of government was instituted, the Manager (as the budget officer) has been the point person for communications with the Attorney.
- 4) When a situation arises that requires an individual Commissioner/Mayor to consult with the Village Attorney, the substance of such communication should be reported by the Attorney at the next Commission meetings so that all elected officials are informed on matters of relevance to decisions on Village business.
- 5) All attorney time entries must be sufficiently detailed to reflect the name of persons participating in the task, the subject and substance of the matters billed to the Village.
- 6) Pursue a substitute for Rebecca Rodriguez as lead attorney.

### **Resource Impact**

The Village budget will experience a positive impact from the proper resolution of these issue. Without it, the impact on resource will continue to be negative.

---

Attachments:  
Reso. 2018-23

Prepared by: Dan Samaria



**VILLAGE OF BISCAYNE PARK**  
**Village Commission Agenda Report**  
**REGULAR MEETING**

Item # 11.d

---

**TO:** Honorable Mayor & Members of the  
Biscayne Park Village Commission

**FROM** Dan Samaria

**DATE:**

**TITLE:** Whistle Blower Protection for Village of Biscayne Park Employees

---

**Recommendation:** In order to better protect their employees Miami-Dade County passed a Whistle Blower Protection ordinance on September 4, 2019. I believe we owe it to our employees to protect them in the same way.

**Background:** Currently we do not have a Biscayne Park ordinance to protect our very dedicated employees. I believe this is extremely unfair and discourages employees from reporting serious issues.

**Resource Impact:** Preparation of ordinance and advertising. Less attorney time will be needed if we use Miami-Dade County ordinance and change only necessary wording for Biscayne Park.

**Attachment:** Copy of Miami-Dade County ordinance passed on September 4, 2019

---

Prepared by: Dan Samaria

# MEMORANDUM

Agenda Item No. 7(F)

---

**TO:** Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

**DATE:** September 4, 2019

**FROM:** Abigail Price-Williams  
County Attorney

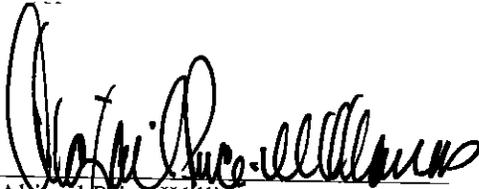
**SUBJECT:** Ordinance relating to Municipal Whistleblowers; amending article LXXI of chapter 2 of the Code; requiring municipalities to adopt ordinances by a certain date to protect municipal employees who disclose specified information; setting minimum standards for municipalities to enact such ordinances; requiring municipalities to submit annual reports; providing for Inspector General oversight; providing that Board may take certain actions in the event municipalities are not in compliance with minimum standards

---

**A substitute was presented and forward to the BCC with a favorable recommendation at the 7-17-19 Heath Care and County Operations Committee. This substitute differs from the original version in that it: 1) replaces mandatory language with language making it optional for municipalities to adopt Whistleblower Ordinances in compliance with the minimum standards of this Ordinance; 2) requires only those municipalities that opt-in to the minimum standards of this Ordinance to submit annual reports; 3) modifies the scope of Inspector General oversight; and 4) removes the penalty provision for municipalities that are not in compliance with minimum standards.**

**Rule 5.06(i) of the Board's Rules of Procedure provides that differences between an original item and a substitute item should be uniquely identified in the substitute by double underlining and double strike-through, or where such approach would not clearly show the difference or are not practical, by providing footnotes or comments on the item. Based on Rule 5.06(i), the preceding comprehensive description of the differences between the original item and substitute is provided in lieu of double underlining and double strike through.**

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Sally A. Heyman and Co-Sponsor Commissioner Esteban L. Bovo, Jr.

  
Abigail Price-Williams  
County Attorney

APW/lmp

# Memorandum



**Date:** September 4, 2019

**To:** Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez". The signature is written in a cursive style and is positioned to the right of the "From:" field.

**Subject:** Fiscal Impact Statement for Ordinance Relating to Municipal Whistleblowers - Substitute

---

The substitute item amends the legislation to allow municipalities to opt-in rather than mandating the adoption of Whistleblower Ordinance and its compliance. Therefore, if the demand is minimal, then the Commission on Ethics and the Office of the Inspector General (OIG) will be able to perform these tasks using existing resources. However, if a substantial number of the municipalities adopt conforming ordinances, then the OIG may have to reassess the impact on their existing resources.

A handwritten signature in black ink, appearing to read "Edward Marquez". The signature is written in a cursive style and is positioned above the printed name.

Edward Marquez  
Deputy Mayor

FIS05019 191806

2

# Memorandum



**Date:** September 4, 2019

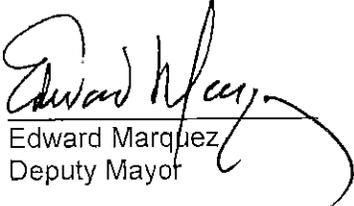
**To:** Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez   
Mayor

**Subject:** Social Equity Statement for Ordinance Relating to Municipal Whistleblowers

---

The implementation of this ordinance could have a positive social benefit for the employees of municipalities who are whistleblowers. This benefit would be based on the uniform standards and confidentiality provisions of the ordinance, as well as employee protection from retaliation by a municipality or independent contractor against whom the employee has filed a complaint.

  
Edward Marquez  
Deputy Mayor



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

**DATE:** September 4, 2019

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Agenda Item No. 7(F)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present \_\_\_\_, 2/3 membership \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) \_\_\_\_) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 7(F)  
9-4-19

ORDINANCE NO. \_\_\_\_\_

ORDINANCE RELATING TO MUNICIPAL WHISTLEBLOWERS; AMENDING ARTICLE LXXI OF CHAPTER 2 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; REQUIRING MUNICIPALITIES TO ADOPT ORDINANCES BY A CERTAIN DATE TO PROTECT MUNICIPAL EMPLOYEES WHO DISCLOSE SPECIFIED INFORMATION; SETTING MINIMUM STANDARDS FOR MUNICIPALITIES TO ENACT SUCH ORDINANCES; REQUIRING MUNICIPALITIES TO SUBMIT ANNUAL REPORTS; PROVIDING FOR INSPECTOR GENERAL OVERSIGHT; PROVIDING THAT BOARD MAY TAKE CERTAIN ACTIONS IN THE EVENT MUNICIPALITIES ARE NOT IN COMPLIANCE WITH MINIMUM STANDARDS; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

**WHEREAS**, in 1994, the Board of County Commissioners adopted Ordinance No. 94-107 known as the Employee Protection Ordinance consistent with section 112.3187 *et seq.*, Florida Statutes, now codified as chapter 2, article IV, division 6 of the Code of Miami-Dade County, which prohibits the County from retaliating against County employees for disclosing specified information concerning unlawful activity, misfeasance or malfeasance by the County or independent contractors; and

**WHEREAS**, in 1996, the Board of County Commissioners adopted Ordinance No. 96-41 known as the Whistleblower Ordinance, now codified as chapter 2, article LXXI of the Code, which currently prohibits the County from retaliating against any person for disclosing specified information concerning unlawful activity, misfeasance or malfeasance by the County or independent contractors; and

**WHEREAS**, in 2015, the Board of County Commissioners adopted Ordinance No. 15-120, which expanded the means for employees to provide protected disclosures, to empower employees to take responsibility for an efficient and effective government, and to empower them to safely and securely disclose specified information to authorized local officials; and

**WHEREAS**, on October 3, 2017, the Board of County Commissioners adopted Ordinance No. 17-74, to prohibit any employer with 10 or more employees that enters into a contract with the County, from retaliating against any employee or other person for disclosing specified information concerning unlawful activity, misfeasance or malfeasance by employees, agents or independent contractors of County departments; and

**WHEREAS**, some of the municipalities within Miami-Dade County may not have adequate employee protection ordinances; and

**WHEREAS**, it is the intent of this ordinance, consistent with section 112.3187 *et seq.*, Florida Statutes, the State Whistleblower's Act, to set minimum standards for municipalities to enact employee protection ordinances, and to ensure that municipal employees who disclose violations of law or wrongdoing by a municipality or independent contractors have effective protections, including confidentiality and protection from retaliation,

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:**

**Section 1.** Article LXXI of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:<sup>1</sup>

---

<sup>1</sup> Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

**ARTICLE LXXI. – PROTECTION OF PERSONS  
DISCLOSING SPECIFIED INFORMATION.**

**>>DIVISION I. COUNTY EMPLOYEES AND  
CONTRACTORS.<<**

\* \* \*

**>>DIVISION II. MUNICIPAL EMPLOYEES AND  
CONTRACTORS.**

**Sec. 2-967.10.2 - Declaration of legislative intent.**

The intent of this division is to provide optional minimum standards for municipalities to prevent municipalities or independent contractors from taking retaliatory action against an employee or person who reports a violation of law on the part of a municipality, municipal officer, or independent contractor relating to a substantial and specific danger to the public's health, safety, or welfare; or who reports unlawful activity, misfeasance, malfeasance, gross waste of funds, or any other abuse or gross neglect of duty on the part of a municipality, municipal officer, or independent contractor.

Recognizing that the State of Florida has adopted its own Whistle-blower's Act, section 112.3187 et. seq., Florida Statutes, and that the state act provides for the adoption of local procedures for administrative enforcement, the Board intends this ordinance to be interpreted consistently with the state act, as it may be amended from time to time.

**Sec. 2-967.10.3 - Jurisdiction and area of application.**

- (1) The provisions of this division shall not apply to any complaint naming the county, the state, the federal government, or any of their agencies, employees, or independent contractors as a respondent.
- (2) This division shall be an optional minimum standard to be enacted and enforced by the municipalities; provided, any municipality may establish and enforce more stringent regulations as such municipality may deem necessary.
- (3) The provisions of this division shall be cumulative and in addition to and not in derogation of any and all other existing provisions or laws.

**Sec. 2-967.10.4 - Definitions. As used in this Article:**

- (1) “Municipality” means a municipality within Miami-Dade County created pursuant to general or special law authorized or recognized pursuant to section 2 or section 6, article VIII of the State Constitution or pursuant to article 6 of the Miami-Dade County Home Rule Charter.
- (2) “Employee” means a person who performs services for, and under the control and direction of, or contracts with, a municipality or independent contractor for wages or other remuneration.
- (3) “Adverse personnel action” means the discharge, suspension, transfer, or demotion of any employee or the withholding of bonuses, the reduction in salary or benefits, or any other adverse personnel action taken against an employee within the terms and conditions of employment by a municipality or independent contractor.
- (4) “Independent contractor” means a person, other than a federal, state, or local government entity, engaged in any business and who enters into a contract, including a provider agreement, with a municipality.
- (5) “Person” means any natural person, corporation, firm, joint venture or entity other than a federal, state or local government entity or any employee thereof.
- (6) “Technical support” means assistance intended to facilitate the development of processes and procedures and not assistance in conducting investigations.
- (7) “Ethics Commission” means the Miami-Dade Commission on Ethics and Public Trust.
- (8) “Inspector General” means the Miami-Dade County Office of the Inspector General.
- (9) All other words or terms used in this ordinance shall have the same meaning as such words and terms have under the State Whistleblower’s Act.

8

**Sec. 2-967.10.5. - Municipal Employee Protection.**

- (1) County Technical Support for Municipal Employee Protection.
  - (a) The Inspector General may provide a requesting municipality with technical support in developing the processes and procedures for receiving, documenting, and investigating disclosures of actual or suspected violations of law or prohibited acts committed by an employee or agent of the municipality or independent contractor.
  - (b) The Ethics Commission may provide a requesting municipality with technical support in developing the processes and procedures for receiving, documenting and investigating complaints of adverse personnel action taken in retaliation for disclosing information under this division.
  - (c) The technical support referenced in subsections (1)(a) and (b) above is not intended to replace the municipality's own commitment of resources to develop a system for the intake, processing, and documentation of disclosures of violations and adverse personnel actions, and the investigation of such complaints.
- (2) Opt-in Provision for Municipalities to Enact Employee Protection Ordinances.
  - (a) At its option, any municipality within Miami-Dade County may adopt Employee Protection Ordinances consistent with the State Whistleblower's Act and the minimum standards of this division. Within 30 days of the adoption of any such municipal ordinance, the municipality shall provide written notice and a copy of the municipal ordinance to: the Clerk of the Board of the Board of County Commissioners, the Inspector General, and the Ethics Commission.
  - (b) A current list of all municipalities that have adopted their own employee protection ordinances and programs shall be kept on file with the Inspector General and shall be available for inspection.

(3) Minimum Standards for Municipal Ordinances. Pursuant to the authority granted in section 1.01(A)(18) of the Miami-Dade County Home Rule Charter, the County hereby adopts the provisions below as optional minimum standards for municipal ordinances.

(a) To comply with the optional minimum standards for employee protection ordinances, a municipal ordinance shall contain provisions:

(i) that designate the “actions prohibited” and

1. specify that the municipality shall not dismiss, discipline, take any other adverse personnel action or other adverse action that affects the rights or interests of an employee or person because the employee or person has disclosed or threatened to disclose information pursuant to this division; and
2. specify that the provisions shall not apply when an employee or person discloses information known by the employee or person to be false.

(ii) that designate the “nature of information disclosed” and specify that the information disclosed under the provision must include:

1. Any violation or suspected violation of any federal, state or local law, rule or regulation committed by an employee or agent of the municipality or independent contractor which creates and presents a substantial and specific danger to the public’s health, safety or welfare; or
2. Any act or suspected act of gross mismanagement, malfeasance, gross waste of public funds or gross neglect of duty committed by an employee or

agent of the municipality or an independent contractor.

- (iii) that designate “to whom information disclosed” and require that the information be disclosed to a chief executive officer of the municipality or such official or officials as the chief executive officer may designate to receive such information on his/her behalf, or other appropriate local official for the municipality as described in section 112.3187(6), Florida Statutes.
- (iv) that designate the “employees and persons protected” and
  - 1. require the protection of employees and persons who disclose information on their own initiative in a written and signed complaint; who are requested to participate in an investigation, hearing, or other inquiry conducted by the municipality, any local, state or federal government entity having the authority to investigate, police, manage, or otherwise remedy the violation or act; who refuse to participate in any adverse personnel action prohibited by this division; who refuse to participate in any adverse action prohibited by this division; or who are otherwise protected by the State Whistleblower's Act.
  - 2. require that the provisions may not be used by persons while they are under care, custody, or control of the state or county correctional system or, after release from the care, custody, or control of the state or county correctional system, with respect to circumstances that occurred during any period of incarceration.

3. require that no remedy or other protection under the ordinance apply to any person who has committed or intentionally participated in committing a violation or suspected violation for which protection under the ordinance is being sought.
  4. require that an employee who provides false information pursuant to this ordinance may be investigated and prosecuted pursuant to Florida Statutes.
  5. require that it shall be an affirmative defense to any complaint brought pursuant to the ordinance that the adverse action was predicated upon grounds other than, and would have been taken absent, the employee's or person's exercise of rights protected by the ordinance.
- (v) that designate "remedies" and require the chief executive officer of the municipality to designate an appropriate executive-level municipal official or authority to receive written and signed complaints of prohibited actions as described in this division, and that establish an administrative procedure for handling such complaints. The administrative procedure created by municipal ordinance must provide for the complaint to be heard by a panel of impartial persons appointed by the appropriate executive-level municipal official or authority. Such panelists may be paid a fee for their services, but shall not be deemed municipal officials or employees. The panel shall conduct a hearing after notice to the complainant, the respondent, and the municipal department, division, bureau, commission, authority, or political subdivision, or independent contractor involved. Any interested party may procure

the attendance of witnesses and the production of records at such hearings. Upon hearing the complaint, the panel must make findings of fact and conclusions of law, and recommendations for a final decision by the chief executive officer or other appropriate executive-level municipal official or authority. Within 180 days after entry of a final decision by the municipal authority, the public employee who filed the complaint may bring a civil action in any court of competent jurisdiction;

(vi) that designate "relief" to employees or persons subjected to actions prohibited under this division and

1. require, in any case brought under this division in which the chief executive officer of the municipality or other appropriate executive-level municipal official or authority finds that the employee has been subjected to an adverse action in violation of this division, the chief executive officer or designee to:

a. reinstate the employee to the same position held before the adverse personnel action was commenced or to an equivalent position, or award reasonable front pay as alternative relief;

b. reinstate the employee's fringe benefits and seniority rights, as appropriate; and

c. compensate the employee, if appropriate, for lost wages, benefits or other lost remuneration caused by the adverse personnel action, or compensate the person, if

appropriate, for the lost income, benefits or other lost remuneration caused by the adverse action.

2. specify that the municipality may sanction an independent contractor for violations of this division in one or more of the following ways:
  - a. require the municipal independent contractor to compensate the person or reimburse the municipality for any amounts paid by the municipality to compensate the person, for the lost income, benefits or other lost remuneration caused by the adverse action of the municipal independent contractor;
  - b. debar the independent contractor pursuant to any existing municipal debarment procedures; or
  - c. suspend payment or terminate payment under the contract or terminate the contract with the municipal independent contractor.
3. require that if a municipal independent contractor fails to pay any sanctions assessed by the municipality under this division, the municipality provide for sanctions against the non-complying independent contractor similar to the sanctions delineated under section 2-967.8(4) – (8) of the Code.

- (vii) that designate “existing rights” and ensure that the rights, privileges or remedies of any employee under any other law or rule or under any collective bargaining agreement or employment contract are not diminished; and that the election of remedies provided by section 447.401, Florida Statutes, shall also apply to complaints under the municipal ordinance.
- (viii) that designate “confidentiality of individuals disclosing information” and guarantee the protections of state law be afforded to any individual who discloses information in compliance with this division to the municipal officials set forth in this division. For example, the identity of such individuals shall be confidential and exempt from the provisions of the public records laws to the fullest extent permitted by, and in accordance with the law including, but not limited to, the confidentiality requirements and exemptions set forth in sections 119.0713 and 112.3188, Florida Statutes.
- (ix) that require any employee found by the chief executive officer or other appropriate executive-level municipal official or authority to have retaliated against another municipal employee in violation of this division, shall be subject to disciplinary action up to and including dismissal from municipal employment.
- (x) that require the chief executive officer, or his/her designee, to provide training regarding this division to all current municipal employees, and to new municipal employees hired after the effective date of the municipal employee protection ordinance as part of the initial municipal employee orientation;

- (xi) that require the chief executive officer, or his/her designee to periodically provide information and publish instructions on this division including, but not limited to, the disclosure of information, the methods of disclosing information, and the protections afforded by this division, to all employees of the municipality and public officials.
  - (xii) that require the chief executive officer, or his/her designee to maintain an accurate and complete log of all complaints made by municipal employees pursuant to this Division, and to provide that report to the Inspector General on an annual basis;
- (b) *Optional Investigation by the Ethics Commission. In addition to the remedies set forth in this division, every municipal employee protection ordinance should also provide the following retaliation review process:*
- (i) Any employee protected under this division who alleges retaliation may, only after exhausting all available municipal administrative remedies provided for in this division, or an applicable collective bargaining agreement, file a written complaint with the Ethics Commission alleging a prohibited personnel action, no later than 60 days after a final written decision regarding an alleged prohibited personnel action has been rendered under the administrative or contractual procedures referenced above. The purpose of such complaint is to determine whether, in addition to any findings or determination made in any of the above-referenced administrative or contractual proceedings, there has been a violation of this division.
  - (ii) Within ten working days after receiving a complaint under this division, the Ethics Commission shall acknowledge receipt of the complaint and provide copies of the

complaint to the employee accused of retaliation and the Department Director of the department in which such employee is employed.

(iii) Upon the filing of a complaint with the Ethics Commission under this division, the Ethics Commission shall:

1. Conduct a preliminary investigation, to the extent necessary, to determine whether there is probable cause to believe that a prohibited personnel action under this division, has occurred.
  
2. Within 90 days after receiving the complaint, provide the accused employee, the Department Director of the department in which the accused employee is employed and the complainant with a copy of a probable cause memorandum and conduct a probable cause hearing before the Ethics Commission. Notwithstanding the procedures provided in chapter 2, article LXXVIII of the Code of Miami-Dade County, the Ethics Commission may use hearing examiners when a complaint is filed under this division, which shall make a determination as to whether there is probable cause to believe retaliation prohibited by this division has occurred. The probable cause memorandum and the final written decision and findings of the administrative or contractual proceedings shall be presumed admissible in any Ethics Commission hearing conducted under this division.

- (iv) The time limits regarding the actions to be taken by the Ethics Commission set forth in subsections (3)(b)(ii) and (iii) above may be extended by the Ethics Commission for good cause.
- (v) Based on its fact-finding report, the Ethics Commission may recommend to the municipalities' Mayor or chief executive officer, an appropriate course of action. The Mayor or chief executive officer may thereafter take appropriate relief in accordance with section 2-967.10.5.(a)(vi) of the Code.
- (c) Municipalities that have already enacted employee protection ordinances as of the effective date of this Ordinance shall have the option to bring their ordinances into compliance with these minimum standards.
- (4) *Municipality Shall File Annual Report.* Municipalities that have enacted employee protection ordinances pursuant to the optional provisions of this ordinance shall annually file a report detailing the number of Employee Protection Ordinance complaints received and the dispositions of those complaints with the Inspector General. Consistent with the confidentiality provisions in subsection (3)(a)(viii) above, the municipality's annual report should not contain the identity of any complainant.
- (5) *Oversight by the Inspector General.* In accordance with the Inspector General's functions, powers and authority, the Inspector General:
  - (a) shall have the power to audit, investigate, monitor, oversee, inspect and review the processes and procedures for the receipt, intake, and investigation of complaints that have been established in accordance with the optional minimum standards established by this division and a municipality's enacted ordinance.

- (b) shall have the power to obtain from municipalities any reports or information required by the Inspector General during the course of an audit, investigation, monitoring, oversight, inspection or review, conducted in accordance with this division.
  
- (c) Whenever the Inspector General concludes a report or recommendation regarding a municipality's compliance with the optional provisions of this division, the Inspector General shall provide a copy of the report or recommendation to the chief executive officer, or his/her designee, responsible for the enforcement of the municipality's employee protection ordinance. The Inspector General shall provide the chief executive officer, or his/her designee, with 10 working days to submit a written explanation or rebuttal of the findings before the report or recommendation is finalized, and such timely submitted written explanation or rebuttal shall be attached to the finalized report or recommendation. The Inspector General's final report will be submitted to the governing board of the municipality and to the Board of County Commissioners.<<

**Section 2.** If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

**Section 3.** It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

**Section 4.** This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as  
to form and legal sufficiency:



Prepared by:



Marlon D. Moffett

Prime Sponsor: Commissioner Sally A. Heyman  
Co-Sponsor: Commissioner Esteban L. Bovo, Jr.

## If you are retaliated against

If you are an employee of a state agency and you disclose information under the Whistle-blower's Act and that disclosure results in alleged retaliation by an employer in the form of an adverse personnel action, you may file a written complaint with the Florida Commission on Human Relations no later than 60 days after the prohibited personnel action. You can contact the Commission by calling (800) 342-8170 or by writing to the following address:

Florida Commission on Human Relations  
2009 Apalachee Parkway  
Suite 100  
Tallahassee, Florida 32301

"State agency" or "agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government. For purposes of this chapter and chapter 215, "state agency" or "agency" includes, but is not limited to, state attorneys, public defenders, the capital collateral regional counsels, the Justice Administrative Commission, the Florida Housing Finance Corporation, and the Florida Public Service Commission.

Any other person protected by the Whistle-blower's Act may, after exhausting all available contractual or administrative remedies, bring a civil action in any court of competent jurisdiction within 180 days after the action prohibited by the Whistle-blower's Act.

State employees should contact the Whistle-blower's hotline to report:

- Violations of law that present a clear and present danger to the public's health, safety, or welfare
- Gross mismanagement
- Gross waste of funds
- Gross neglect of duty

Whistle-blower's Hotline  
Post Office Box 151  
Tallahassee, Florida 32302

(800) 543-5353 toll-free

(850) 922-1060 in Tallahassee

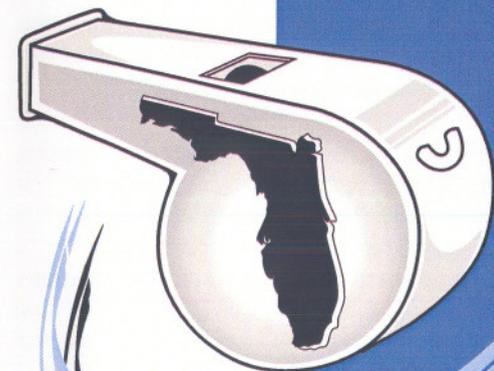
(850) 921-0817 facsimile



Executive Office of the Governor  
Office of the Chief Inspector General

Revised 06/05

## Whistle-blower's Hotline



Blow the  
whistle  
on fraud  
and abuse  
in Florida.

## The Whistle-blower's Act

State employees who blow the whistle on fraud and abuse within state government are protected by law. Sections 112.3187–112.31895 of the Florida Statutes (F.S.) constitute the law known as the "Whistle-blower's Act." These and other Florida Statutes can be viewed on the official internet site of the Florida Legislature at [www.leg.state.fl.us](http://www.leg.state.fl.us).

The legislative intent of the Whistle-blower's Act is to prevent agencies or independent contractors from taking retaliatory action against an employee who reports agency violations of law that create a substantial and specific danger to the public's health, safety, or welfare. It is also the intent of the legislature to prevent agencies or independent contractors from taking retaliatory action against an employee who discloses information alleging improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee.

### Why have a Hotline?

The Chief Inspector General is responsible for promoting accountability, integrity, and efficiency in state government. That responsibility includes maintaining an in-state toll-free whistle-blower's hotline, notifying all employees of the various state agencies of its existence, and providing an address to which whistle-blower information may be forwarded.

### Who should call the Hotline?

State employees, former employees, and applicants of agencies or independent contractors:

"Employee" means a person who performs services for, and under the control and direction of, or contracts with, an agency or independent contractor for wages or other remuneration.

"Agency" means any state, regional, county, local, or municipal government entity, whether executive, judicial or legislative; any official, officer, department, division, bureau, commission, authority, or political subdivision therein; or any public school, community college, or state university.

[Note: For disclosures concerning a local government entity, including any regional, county, or municipal entity, special district, community college district, or school district or any political subdivision of any of the foregoing, the information must be disclosed to a chief executive officer as defined in s. 447.203(9), F.S. or other appropriate official.]

"Independent contractor" means a person, other than an agency, engaged in any business and who enters into a contract, including a provider agreement, with an agency.

### What should be reported?

The Whistle-blower's Hotline is not for general complaints or suggestions. Other means are available for resolving personnel problems or recommending cost-saving measures. This hotline is reserved for reporting:

- (a) Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public's health, safety, or welfare.
- (b) Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor.



### What happens when I call?

When you call the Whistle-blower's Hotline we will take your information and ask basic questions concerning your case. Whether you call or write to the hotline, your information will be reviewed to determine the appropriate course of action. You will be advised as soon as a decision is made.

### How do you investigate?

When circumstances require investigation, the Chief Inspector General or agency inspector general will conduct a thorough investigation and report its findings. The whistle-blower has an opportunity to attach comments to the final report before it is sent to the Governor, the investigating agency, the Joint Legislative Auditing Committee and the Comptroller.

### How are my rights protected?

When your information meets whistle-blower criteria state law enables you to keep your identity confidential, unless disclosure is necessary to protect the public's health, safety or welfare, or absolutely necessary or unavoidable during the investigation. The Whistle-blower's Act also protects you from retaliatory action by your agency for disclosing adverse information.



Executive Office of the Governor  
Office of the Chief Inspector General

Whistle-blower's Hotline  
Post Office Box 151  
Tallahassee, Florida 32302

(800) 543-5353 toll free  
(850) 922-1060 in Tallahassee  
(850) 921-0817 facsimile

## The 2019 Florida Statutes

---

[Title X](#)  
PUBLIC OFFICERS, EMPLOYEES, AND  
RECORDS

[Chapter 112](#)  
PUBLIC OFFICERS AND EMPLOYEES: GENERAL  
PROVISIONS

[View Entire Chapter](#)

**112.3187 Adverse action against employee for disclosing information of specified nature prohibited; employee remedy and relief.—**

(1) SHORT TITLE.—Sections [112.3187-112.31895](#) may be cited as the “Whistle-blower’s Act.”

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against an employee who reports to an appropriate agency violations of law on the part of a public employer or independent contractor that create a substantial and specific danger to the public’s health, safety, or welfare. It is further the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against any person who discloses information to an appropriate agency alleging improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee.

(3) DEFINITIONS.—As used in this act, unless otherwise specified, the following words or terms shall have the meanings indicated:

(a) “Agency” means any state, regional, county, local, **or municipal government entity**, whether executive, judicial, or legislative; any official, officer, department, division, bureau, commission, authority, or political subdivision therein; or any public school, community college, or state university.

(b) “Employee” means a person who performs services for, and under the control and direction of, or contracts with, an agency or independent contractor for wages or other remuneration.

(c) “Adverse personnel action” means the discharge, suspension, transfer, or demotion of any employee or the withholding of bonuses, the reduction in salary or benefits, or any other adverse action taken against an employee within the terms and conditions of employment by an agency or independent contractor.

(d) “Independent contractor” means a person, other than an agency, engaged in any business and who enters into a contract, including a provider agreement, with an agency.

(e) “Gross mismanagement” means a continuous pattern of managerial abuses, wrongful or arbitrary and capricious actions, or fraudulent or criminal conduct which may have a substantial adverse economic impact.

(4) ACTIONS PROHIBITED.—

(a) An agency or independent contractor shall not dismiss, discipline, or take any other adverse personnel action against an employee for disclosing information pursuant to the provisions of this section.

(b) An agency or independent contractor shall not take any adverse action that affects the rights or interests of a person in retaliation for the person’s disclosure of information under this section.

(c) The provisions of this subsection shall not be applicable when an employee or person discloses information known by the employee or person to be false.

(5) NATURE OF INFORMATION DISCLOSED.—The information disclosed under this section must include:

(a) Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public’s health, safety, or welfare.

(b) Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor.

(6) TO WHOM INFORMATION DISCLOSED.—The information disclosed under this section must be disclosed to any agency or federal government entity having the authority to investigate, police, manage, or otherwise remedy the violation or act, including, but not limited to, the Office of the Chief Inspector General, an agency inspector general or the employee designated as agency inspector general under s. [112.3189\(1\)](#) or inspectors general under s. [20.055](#), the Florida Commission on Human Relations, and the whistle-blower’s hotline created under s. [112.3189](#). However, for disclosures concerning a local governmental entity, including any regional, county, or municipal entity, special district, community college district, or school district or any political subdivision of any of the foregoing, the information must be disclosed to a chief executive officer as defined in s. [447.203\(9\)](#) or other appropriate local official.

(7) EMPLOYEES AND PERSONS PROTECTED.—This section protects employees and persons who disclose information on their own initiative in a written and signed complaint; who are requested to participate in an investigation, hearing, or other inquiry conducted by any agency or federal government entity; who refuse to participate in any adverse action prohibited by this section; or who initiate a complaint through the whistle-blower’s hotline or the hotline of the Medicaid Fraud Control Unit of the Department of Legal Affairs; or employees who file any written complaint to their supervisory officials or employees who submit a complaint to the Chief Inspector General in the Executive Office of the Governor, to the employee designated as agency inspector general under s. [112.3189\(1\)](#), or to the Florida Commission on Human Relations. The provisions of this section may not be used by a person while he or she is under the care, custody, or control of the state correctional system or, after release from the care, custody, or control of the state correctional system, with respect to circumstances that occurred during any period

of incarceration. No remedy or other protection under ss. [112.3187-112.31895](#) applies to any person who has committed or intentionally participated in committing the violation or suspected violation for which protection under ss. [112.3187-112.31895](#) is being sought.

(8) REMEDIES.—

(a) Any employee of or applicant for employment with any state agency, as the term “state agency” is defined in s. [216.011](#), who is discharged, disciplined, or subjected to other adverse personnel action, or denied employment, because he or she engaged in an activity protected by this section may file a complaint, which complaint must be made in accordance with s. [112.31895](#). Upon receipt of notice from the Florida Commission on Human Relations of termination of the investigation, the complainant may elect to pursue the administrative remedy available under s. [112.31895](#) or bring a civil action within 180 days after receipt of the notice.

(b) Within 60 days after the action prohibited by this section, any local public employee protected by this section may file a complaint with the appropriate local governmental authority, if that authority has established by ordinance an administrative procedure for handling such complaints or has contracted with the Division of Administrative Hearings under s. [120.65](#) to conduct hearings under this section. The administrative procedure created by ordinance must provide for the complaint to be heard by a panel of impartial persons appointed by the appropriate local governmental authority. Upon hearing the complaint, the panel must make findings of fact and conclusions of law for a final decision by the local governmental authority. Within 180 days after entry of a final decision by the local governmental authority, the public employee who filed the complaint may bring a civil action in any court of competent jurisdiction. If the local governmental authority has not established an administrative procedure by ordinance or contract, a local public employee may, within 180 days after the action prohibited by this section, bring a civil action in a court of competent jurisdiction. For the purpose of this paragraph, the term “local governmental authority” includes any regional, county, or municipal entity, special district, community college district, or school district or any political subdivision of any of the foregoing.

(c) Any other person protected by this section may, after exhausting all available contractual or administrative remedies, bring a civil action in any court of competent jurisdiction within 180 days after the action prohibited by this section.

(9) RELIEF.—In any action brought under this section, the relief must include the following:

(a) Reinstatement of the employee to the same position held before the adverse action was commenced, or to an equivalent position or reasonable front pay as alternative relief.

(b) Reinstatement of the employee’s full fringe benefits and seniority rights, as appropriate.

(c) Compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the adverse action.

(d) Payment of reasonable costs, including attorney’s fees, to a substantially prevailing employee, or to the prevailing employer if the employee filed a frivolous action in bad faith.

(e) Issuance of an injunction, if appropriate, by a court of competent jurisdiction.

(f) Temporary reinstatement to the employee’s former position or to an equivalent position, pending the final outcome on the complaint, if an employee complains of being discharged in retaliation for a protected disclosure and if a court of competent jurisdiction or the Florida Commission on Human Relations, as applicable under s. [112.31895](#), determines that the disclosure was not made in bad faith or for a wrongful purpose or occurred after an agency’s initiation of a personnel action against the employee which includes documentation of the employee’s violation of a disciplinary standard or performance deficiency. This paragraph does not apply to an employee of a municipality.

(10) DEFENSES.—It shall be an affirmative defense to any action brought pursuant to this section that the adverse action was predicated upon grounds other than, and would have been taken absent, the employee’s or person’s exercise of rights protected by this section.

(11) EXISTING RIGHTS.—Sections [112.3187-112.31895](#) do not diminish the rights, privileges, or remedies of an employee under any other law or rule or under any collective bargaining agreement or employment contract; however, the election of remedies in s. [447.401](#) also applies to whistle-blower actions.

**History.**—ss. 1, 2, 3, 4, 5, 6, 7, 8, ch. 86-233; s. 1, ch. 91-285; s. 12, ch. 92-316; s. 1, ch. 93-57; s. 702, ch. 95-147; s. 1, ch. 95-153; s. 15, ch. 96-410; s. 20, ch. 99-333; s. 2, ch. 2002-400.