

ORDINANCE NO. 15-461

AN ORDINANCE OF THE CITY OF BRADENTON BEACH, FLORIDA, ADOPTING REGULATIONS FOR RESIDENTIAL TRANSIENT USES AND TRANSIENT PUBLIC LODGING ESTABLISHMENTS; IMPLEMENTING THE USE OF CHAPTER 54 (TAXATION), ARTICLE II (OCCUPATIONAL LICENSE TAX) AND THE REQUIREMENTS OF FLORIDA STATUTE CHAPTER 509; REQUIRING A TRANSIENT PUBLIC LODGING ESTABLISHMENT LICENSE (“TPLE LICENSE”) FOR TRANSIENT USE OF HABITABLE PROPERTIES; PROVIDING REQUIREMENTS TO APPLY FOR A TPLE LICENSE; PROVIDING FOR PENALTIES AND ENFORCEMENT INCLUDING, BUT, NOT LIMITED TO CODE ENFORCEMENT PROCEEDINGS, FINES, LIENS AND REVOCATION, NON-ISSUANCE, OR SUSPENSION OF A TPLE LICENSE; REQUIRING INSPECTIONS; REQUIRING NOTICES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BRADENTON BEACH, FLORIDA, AS FOLLOWS:

WHEREAS, Article VIII, Section 2 of the Florida Constitution provides that municipalities shall have governmental, corporate and proprietary powers to enable municipalities to conduct municipal government, perform municipal functions and render municipal services; and,

WHEREAS, Chapter 166, Florida Statutes, the “Municipal Home Rule Powers Act,” implements the applicable provisions of the Florida Constitution and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by law and to enact ordinances in furtherance thereof; and,

WHEREAS, in 2011, the Florida Legislature passed House Bill 883, (Chapter 2011-119, Laws of Florida), amending Florida Statutes, Section 509.032(7)(b), to provide that “[a] local law, ordinance, or regulations may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use or occupancy. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011”; and

WHEREAS, in 2014, the Florida Legislature passed Senate Bill 356 (Chapter 2014-71, Laws of Florida), amending that same statute to read “[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”; and

WHEREAS, the legislative history in Senate Bill 356 provides that:

“The bill permits local governments to create regulation that distinguishes vacation rentals from other residential property. In the past, local government regulations have included noise, parking, registration, and signage requirements for vacation rentals.

The bill does not allow local governments to create regulations that would prohibit vacation rentals or restrict the duration or frequency of vacation rentals. These types of regulation remain preempted to the state.

The grandfather provision in existing law exempting any local law, ordinance, or regulation adopted on or before June 1, 2011, is maintained. Any local law, ordinance, or regulations passed before that date that prohibits or restricts vacation rentals based on the duration or frequency may continue to be enforced.”

WHEREAS, Chapter 205, Florida Statutes, authorizes the City of Bradenton Beach, Florida, to levy a business tax for the privilege of engaging in or managing any business, profession, or occupation within the corporate limits of the City of Bradenton Beach, Florida; and,

WHEREAS, the City of Bradenton Beach Code of Ordinances, Chapter 54, Taxation, Article II, Local Business Tax, sets forth the City’s business tax requirements applicable to persons and entities maintaining a business within the municipal limits of the City; and

WHEREAS, local business taxes are fees charged and the method by which a local governing authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction and are not a regulatory vehicle; and

WHEREAS, the City of Bradenton Beach, pursuant to Ordinance No. 95-292, adopted on the 7th day of September, 1995, fully complied with Section 205.0535, Florida Statutes, and reclassified businesses, professions and occupations and established new rate structures for Local Business Tax Receipts including a category for Rentals and Rental Management Companies; and

WHEREAS, the City Commission, based upon evidence and testimony at public meetings, has determined that it is in the best interest for the public health, safety and welfare of the community to require a regulatory vehicle for Transient Public Lodging Establishments by assuring that licensing requirements be met in order to provide safe and stable Transient Public Lodging Establishments; and

WHEREAS, residents residing within their own residential dwellings are inherently familiar with the local surroundings, local weather disturbances, local hurricane evacuation plans, means of egress from their dwellings, and local regulations, thereby minimizing potential risks to themselves, their families and their community; and

WHEREAS, transient occupants of Transient Public Lodging Establishments, due to their temporary and transient nature, are typically unfamiliar with local surroundings, local regulations, local weather disturbances, local hurricane evacuation plans, and means of egress from within the Transient Public Lodging Establishments that they occupy; and

WHEREAS, the rental of residential units and private homes by the owners or by an authorized representative for temporary and transient occupancy has been identified as a community concern and has resulted in concerns and complaints regarding noise, trash, parking, and safety; and

WHEREAS, due to Anna Maria Island, which consists of three cities, Anna Maria, Holmes Beach, and Bradenton Beach, being an interconnected residential community that offers visitors unique residential vacation opportunities, the City of Bradenton Beach desires to maintain the small-town residential character, spirit, and quality of life within its residential neighborhoods through the adoption of an ordinance to establish specific enforcement regulations pertaining to the use and operation of Transient Public Lodging Establishments. Such ordinance will ensure that Transient Uses will not create adverse impacts to residential neighborhoods due to excessive traffic, noise, trash, parking and safety; and

WHEREAS, the number of occupants under such Transient Public Lodging Establishments has the potential to exceed standards for the design capacity and designated use of such structures and to cause health and safety problems, and as such may constitute a danger to life and adjacent property; and

WHEREAS, minimum health and safety standards are necessary to protect the occupants of Transient Public Lodging Establishments; and

WHEREAS, Anna Maria Island provides refuge to a number of endangered species which are protected by the Federal, State and local government, this ordinance will promote compliance with said regulations and foster additional safeguards against adverse impacts to wildlife being impacted by transient visitors; and

WHEREAS, the City Commission has received evidence which indicates that regulation of Transient Public Lodging Establishments is necessary to protect the character of long established residential neighborhoods from the impacts of Transient Uses, to protect visitors from units and homes which are not properly maintained, and to safeguard endangered species; and

WHEREAS, the City Commission has received input from concerned citizens as well as property managers in order to reach consensus on appropriate regulations for transient uses; and

WHEREAS, the City Commission has determined that the enactment of this Ordinance is for a proper municipal purpose and protects the public health, safety and welfare,

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BRADENTON BEACH, FLORIDA, AS FOLLOWS:

Section 1. Findings of Fact. The WHEREAS clauses set forth above are adopted herein as findings of fact.

Section 2. Purpose of Regulation. This Ordinance is intended to provide a procedure to ensure that Transient Use of residential properties does not create adverse impacts to neighboring properties due to excessive traffic, noise, trash, parking and similar issues. This Ordinance is also intended to ensure that the number of occupants within such Transient Public Lodging Establishments does not exceed the design capacity of the structure or cause health and safety concerns and that minimum health and safety standards are maintained in such establishments to protect the Occupants from unsafe or unsanitary conditions. Additionally, this Ordinance is intended to mitigate and safeguard endangered species impacted by transient uses within the City.

Section 3. Permitted Use. Transient use of residential property shall be permitted as allowed by State Law upon the issuance of a license from the Division of Hotels and Restaurants of the Department of Business and Professional Regulation for Transient Public Lodging Establishments (hereinafter, “DBPR License”), a municipal Business Tax Receipt, and the issuance of a Transient Public Lodging Establishment License (hereinafter, “TPLE License”). These regulations are not intended to prohibit “Vacation Rentals” as preempted by the State of Florida in Chapter 509, Fla. Stat. The DBPR License, Business Tax Receipt, and TPLE License shall be maintained at all times for transient use of the property. Transient uses shall comply with all applicable codes including the Florida Building Code and local regulations.

Section 4. Definitions. For purposes of this Ordinance, the following terms shall be defined as follows:

- A. “Operator” means the owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of a public lodging establishment or public food service establishment.
- B. “Continuing Violation” means a violation which remains uncorrected beyond the time period for correction contained in either the violation notice, a citation, or the final order of the special master, whichever is applicable.

- C. "Repeat Violation" means a violation of a provision of this Ordinance by an Operator or Occupant, who has been issued a citation or whom the special master, or other tribunal, has previously found to have violated or who has admitted violating the same provision of this Ordinance, or the same Transitory Violation, within one year prior to the current violation.
- D. "Transitory Violation" means any violation of this Ordinance or other State or local law at a Transient Public Lodging Establishment.
- E. "Transient Use" means use of a property that is transitory, transient, or temporary in nature.
- F. "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.
- G. "Transient rental or transient rental unit" means any dwelling unit held out as a transient public lodging establishment.
- H. "Non-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 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.
- I. "Occupant" means that person or persons in temporary, transient use of a dwelling unit or portion thereof.
- J. "TPLE License" means a license for a Transient Public Lodging Establishment.

Section 5. Sign and Notification Requirements. Required interior and exterior notices must be posted as described in Sections A and B below, and the address of each TRANSIENT PUBLIC LODGING ESTABLISHMENT must be legible from public view. At any time that the police or code enforcement departments are required or are responding to a complaint at the TPLE, the Occupant shall make all notifications required under this Section available for inspection by the investigating officer.

- A. Exterior Notice. Each TPLE shall be equipped with not more than one weatherproof identification sign, not to exceed two square feet/288 square inches in area. The identification sign shall be displayed during all times the transient rental is being rented on a transient basis (i.e. if unit is only rented out two weeks a year, the sign only needs to be displayed during those two weeks). The

identification sign shall be attached to the structure of the transient rental in a location, which is clearly visible from public view, and shall clearly display all of the following information in lettering of sufficient size to be easily legible. In lieu of posting the notice on the exterior of the structure, notice may be posted on a window where the information is clearly visible from public view:

1. The name of the operator and a telephone number at which that party can be reached on a twenty-four (24) hour basis;
2. The maximum number of occupants permitted to stay overnight in the unit;
3. The maximum number of vehicles associated with the transient rental allowed to be parked on the property; and
4. The telephone number of the City's Police Department and the City's Code Enforcement hotline.
5. By offering transient rentals, the operator shall be deemed to have consented to entry upon the property by any person in order to read the identification sign.

B. Exterior Notice — Exemption. An exterior notice is not required if the transient rental is within a condominium complex where the contact information for the operator is readily visible to the public. Additionally, exterior notices may be displayed in a central location within a condominium complex in lieu of posting notices at each transient rental unit.

C. Interior Notice. Each transient rental unit shall have a notice posted within the unit in a location clearly visible from the entry door, containing all of the following information:

1. The maximum number of occupants permitted to stay overnight in the unit;
2. The maximum number of vehicles associated with the transient rental allowed to be parked on the property;
3. The location of on-site parking spaces;
4. Notification that an occupant, as a person responsible for an unlawful large party, may be cited and fined for creating a disturbance or for violating other provisions of this Ordinance;
5. Notification that trash and refuse shall not be left or stored on the property unless it is deposited in authorized containers intended for pickup by the City's solid waste contractor not more than 24 hours prior to a scheduled pickup. Alternatively, trash may be deposited within a dumpster serving the property. Trash information should include specific instructions on dates of pick-up by the solid waste contractor;
6. Notification that failure to conform to the parking and occupancy requirements for the transient occupancy facility is a violation of the City's Municipal Code, and may result in tickets or citations;

7. The name of the Operator and a telephone number at which that party may be reached on a twenty-four (24) hour basis; and
8. Physical street address of the unit and emergency contact information consisting of 911 and non-emergency contact information for the West Manatee Fire District and City of Bradenton Beach Police Department.
9. Evacuation plan showing exit routes, exits, and fire extinguisher locations.
10. Notice of actions to be taken by the Occupant to protect sea turtles during sea turtle nesting season.
11. A copy of the DBPR License, Business Tax Receipt and TPLE License.

Section 6. Standards and Conditions of Operation. Transient uses shall comply with all of the following standards and conditions of operation.

- A. All applicable codes regarding fire, building and safety, health and safety, parking, noise, solid waste, sea turtle nesting season, and other relevant laws, including, but not limited to:
 - 1) Swimming pool, spa and hot tub safety. A swimming pool, spa or hot tub offered or made available as an amenity at a TPLE shall comply with the current standards of the Residential Swimming Pool Safety Act, Chapter 515, Florida Statutes, and the Virginia Graeme Baker Pool & Spa Safety Act. For pools, spas, and hot tubs installed prior to the effective date(s) of the above noted standards, upgrades to the pool, spa, or hot tub shall be required as a pre-condition of any TPLE licensing approval;
 - 2) Bedrooms. All bedrooms within a TPLE shall meet the minimum requirements of the Florida Building Code, and the Florida Fire Code and Life Safety Code, as applicable;
 - 3) Smoke and carbon monoxide (CO) detection and notification system. Prior to an application for a TPLE, any TPLE constructed prior to the effective date of the 2010 Florida Building Code shall apply for a permit to upgrade both smoke detectors and carbon monoxide detectors to the minimum requirements of the Florida Building Code in effect as of the date of application for a TPLE.
 - 4) Fire extinguisher. A portable, multi-purpose dry chemical 2A:10B:C fire extinguisher shall be installed, inspected and maintained in accordance with NFPA 10 on each floor of a TPLE. The extinguisher(s) shall be installed on the wall in an open common area.
 - 5) Emergency egress maintenance and lighting. Halls, entrances and stairways within a TPLE shall be clean, ventilated and lighted. Hall and stair runners shall be kept in good condition. Rails shall be installed on all stairways and around all porches and steps.

- B. Information on the permitted occupancy, parking capacity for each unit, and trash disposal requirements shall be stated in the rental information and agreement provided to prospective renters prior to their occupancy of the unit. The operator shall restrict the parking for the transient rental so that tenants will not exceed the number of parking spaces allocated to the unit.
- C. Each operator shall have a contact person who is available at all times to respond to questions and issues arising out of the transient rental unit. The operator shall be personally available by telephone on a twenty-four (24) hour basis to respond to calls regarding the condition and/or operation of the transient rental unit. Failure to respond to calls in a timely and appropriate manner on more than two occasions may result in revocation of the TPLE License. For purposes of this Ordinance, responding in a timely and appropriate manner shall mean:
 - 1) that a response to an initial call shall be made within one hour of the time the call was made, and
 - 2) within four (4) hours of the initial call, corrective action shall be commenced to address any violation of this Ordinance.
- D. The number of occupants in any transient rental unit shall not exceed the limits set forth in the Certificate of Occupancy issued pursuant to the Florida Building Code in effect for the structure, or the license issued by DBPR, whichever is less.
- E. TPLEs shall not be used by the transient occupants for activities that would exceed the maximum permitted number of Occupants unless a special event permit is reviewed and approved by the City.

Section 7. TPLE License.

An Operator seeking issuance of a TPLE License, or the renewal, or modification of a TPLE License, shall submit to the City a completed TPLE License application form, together with an application fee in an amount set by resolution of the City Commission. Application fees are non-refundable.

- A. A complete application for the issuance, renewal, or modification of a TPLE License shall demonstrate compliance with the standards and requirements set forth in this Ordinance through the following submittals:
 - 1) A completed TPLE License application form.
 - 2) Payment of applicable fees.
 - 3) A copy of the Operator's current and active license as a transient public lodging establishment with the Florida Department of Business and Professional Regulation if the applicant has such license. Pursuant to Section 166.033, Florida Statutes, the City may process and issue a TPLE

License before the issuance of that state license, predicated and conditioned upon proof of DBPR registration or license to be provided to the City within 90 business days of the City's approval. The City may authorize a one-time extension of not more than 30 days, only where the applicant can demonstrate that DBPR registration or licensure has been delayed due to no fault of the applicant.

- 4) A copy of the Operator's current and active certificate of registration with the Florida Department of Revenue for the purposes of collecting and remitting sales surtaxes, transient rental taxes, and any other taxes required by law to be remitted to the Florida Department of Revenue, if applicable. Pursuant to Section 166.033, Florida Statutes, the City may process and issue a TPLE License before the issuance of that state certificate of registration.
- 5) Evidence of the Operator's current and active account with the Manatee County Tax Collector for the purposes of collecting and remitting tourist development taxes and any other taxes required by law to be remitted to the Manatee County Tax Collector, if applicable. Pursuant to Section 166.033, Florida Statutes, the City may process and issue a TPLE License before the establishment of such account.
- 6) Exterior Site Sketch. An exterior sketch of the TPLE shall be provided, demonstrating compliance with the standards and requirements set forth in Ordinance. The sketch provided shall depict and identify all structures, spas, hot tubs, fencing, and uses, including areas provided for off-street and trash collection. For purposes of the sketch, off-street parking spaces delineated so as to enable a fixed count of the number of spaces provided.
- 7) Interior Building Sketch by Floor. A building sketch by floor shall be provided, depicting a floor layout and demonstrating compliance with the standards and requirements set forth in this Ordinance. The sketch provided shall depict all bedrooms, other rooms, exits, hallways, stairways, smoke and carbon monoxide detectors, fire extinguishers and exit signage/lighting, as applicable.

(c) Applications deemed to be incomplete shall not be processed further until the applicant has submitted those items noted as missing or incomplete. Staff authorized under this ordinance to process applications for TPLE's shall review and notify the applicants of any deficiencies or incomplete information within 45 business days of submittal of the application.

(d) TPLE License applications shall be sworn to under penalty of perjury, and false statements in an application shall be a basis for the revocation of any license issued pursuant to such application.

(e) A TPLE License shall be valid for one year after date of issuance.

Section 8. Inspection Requirements. Any new transient rental unit within a residential structure shall be inspected, prior to commencement of the use, by a qualified inspector authorized and approved by the City to conduct such inspections. The inspection shall verify compliance with all standards and conditions of operation including signage requirements as well as applicable safety requirements. As a condition to receiving a Business Tax Receipt, the operator shall submit a completed inspection form to the City showing that the unit has passed inspection and is approved for transient rental. The actual cost of such inspection, plus any administrative charges, shall be paid by the Operator. Inspection fees shall be set by resolution of the City Commission.

Section 9. Violations. Notwithstanding the penalties in Section 205.053, Fla. Stat. and Article III, Code Enforcement, Chapter 2 of the Code of Ordinances, the fine for the operation of any transient public lodging establishment or transient rental without all of the following: a valid Business Tax Receipt, DBPR License, and TPLE License shall be one hundred twenty-five dollars (\$125) for the first violation and two hundred fifty dollars (\$250) for a second or subsequent violation within three years of a first violation.

A. **Transitory Violations.** For Transitory Violations as defined herein, the Transient Rental owner, the Transient Rental Agent, and/or the offending Occupant(s), as applicable and without limitation, shall each be deemed to be a "violator" as that term is defined in Article III, Code Enforcement, Division 2, Code Enforcement Special Master, Section 2-72, of Chapter 2 of the Code of Ordinances of the City of Bradenton Beach, and may be punished as follows:

1. Each individual Transitory Violation shall constitute a separate and distinct Violation, and if the Transitory Violation continues for more than one day, each day that the Violation continues will be considered a separate and distinct Violation.
2. A violation of any provision of this Ordinance is subject to the general penalty provisions and/or code enforcement provisions set forth in Article III, Code Enforcement.
3. **Citation/Violation Notice.** For all purposes under this Section, service of citation/notice on the Operator and/or Owner shall be deemed service of notice on any one of the following: the applicable Transient Rental Agent, Transient Rental Owner, the Transient Rental Agency with which such Transient Rental Agent is associated. Service of a citation or notice on the Occupant shall be deemed service of notice on the Occupant only.

B. **Continuing Violations.** For Continuing Violations as defined herein, the Transient Rental owner, the Transient Rental Agent, and/or the offending Occupant(s), as applicable and without limitation, shall each be deemed to be a "violator" as that term is used in Article III, Code Enforcement, Division 2, Code Enforcement Special Master, Section 2-72, of Chapter 2 of the Code of Ordinances, and may be punished as follows:

1. Each day a Violation exists shall constitute a separate and distinct Violation.
 2. Failure to obtain a DBPR license within 45 business days of being issued a citation, or failure to apply for a local Business Tax Receipt within two business days of being issued a citation, shall be deemed to be a Continuing Violation as defined in this ordinance.
 3. A violation of any provision of this Ordinance is subject to the general penalty provisions and/or code enforcement provisions set forth in Article III, Code Enforcement, Chapter 2 of the Code of Ordinances.
 4. Citation/Violation Notice. For all purposes under this Section, service of notice on the Operator and/or Owner shall be deemed service of notice on any one of the following: the applicable Transient Rental Agent, Transient Rental Owner, the Transient Rental Agency with which such Transient Rental Agent is associated, and/or the Occupant.
- C. Revocation, Suspension, Non-issuance and/or Non-renewal of TPLE License. Non-compliance by an operator of the requirements for licensing and operation of transient rental units, or three or more Transitory Violations at the same property address within twelve consecutive months, may result in the revocation or suspension of the TPLE License authorizing the use, and no TPLE License may be issued to the same licensee for operation of a transient occupancy facility for a period of twelve (12) months following such revocation. No Occupant shall occupy a Vacation Rental for which a TPLE License has been revoked or suspended. The City Clerk may revoke or suspend the TPLE License upon the written request for revocation by the Code Enforcement Department of the City. Notice of revocation shall be provided to the Operator and Owner of the subject property.

Any decision of the City relating to the grant, denial, renewal, or suspension of a TPLE License under this Section shall be rendered in writing in appealable form. If a notice of appeal by the Operator or Owner is filed with the City Clerk within ten (10) days after notice of the adverse action is provided to the Operator or Owner, the City Clerk shall place the matter on the agenda for the next available meeting of the Special Master. Notice of the date of appeal shall be provided to the Operator and Owner. The decision of the Special Master shall be final and shall be rendered in writing in appealable form. Such final decision may be reviewed as permitted under Florida law.

Section 10. Non-interference with existing rental contracts. Application for a TPLE License shall be made not later than 45 days after the effective date of this Ordinance. At the time of making application, Operators shall produce evidence of any existing TPLE reservations/contracts/leases, which may be performed by the Operator without Violation of this Ordinance. All rental contracts entered into after the effective date of this Ordinance shall comply with the regulations herein.

Section 11. Immunity From Prosecution. The City of Bradenton Beach, the City Commission, the Mayor, the City Commissioners, any of the City’s departments or agents, any law enforcement officer, and any individual filing a complaint with the City shall be immune from prosecution, civil or criminal, for reasonable, good-faith entrance to a TPLE while acting within the scope of this Ordinance.

Section 12. Severability. If any word, clause, sentence, paragraph, section or part thereof contained in this Ordinance is declared to be unconstitutional, unenforceable, void or inoperative by a court of competent jurisdiction, such declaration shall not affect the validity of the remainder of the Ordinance.

Section 13. Repeal. All Ordinances or parts of Ordinances in conflict herewith shall be and the same are hereby repealed.

Section 14. Effective Date. This Ordinance shall become effective immediately upon adoption.

PASSED AND DULY ADOPTED with a quorum present and voting this _____ day of _____, 2015.

CITY OF BRADENTON BEACH, FLORIDA, BY AND THROUGH THE CITY COMMISSION OF THE CITY OF BRADENTON BEACH.

BY: _____
JACK CLARKE, MAYOR

ATTEST: _____
TERRI SANCLEMENTE, CITY CLERK