

ORDINANCE NO. 2011-549

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING CHAPTER 21 “ZONING,” ARTICLE I “IN GENERAL,” SECTION 21-1 “DEFINITIONS AND RULES OF CONSTRUCTION” OF THE VILLAGE CODE OF ORDINANCES CREATING A VACATION RENTAL DEFINITION; AMENDING CHAPTER 21 “ZONING,” ARTICLE IV “SUPPLEMENTARY DISTRICT REGULATIONS” OF THE VILLAGE CODE CREATING SECTION 21-363 “VACATION RENTAL USES;” PROVIDING FOR VACATION RENTAL USE REGULATIONS; AMENDING THE LIST OF PERMITTED, CONDITIONAL, AND PROHIBITED USES IN ZONING DISTRICTS WITHIN THE VILLAGE RELATING TO VACATION RENTAL USES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on May 6, 2011, the Florida Legislature adopted House Bill 883 relating to vacation rental uses within the state and preempting local governments from regulating such uses; and

WHEREAS, Article VII, Section 2 of the Florida Constitution, and Chapter 166, Florida Statutes, provide municipalities with the authority to exercise any power for municipal purposes, except where prohibited by law, and to adopt ordinances in furtherance thereof; and

WHEREAS, Section 509.032(7), Florida Statutes, as amended by House Bill 883 (2011) provides that a local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy; however, this preemption does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011; and

WHEREAS, rental of residential dwelling units to transient visitors (“vacation rentals”) can result in incompatible adverse impacts on neighborhoods including, but not limited to, increased noise, garbage, litter and traffic, changes to the private residential character of the neighborhood, the

uncertainty and instability of the identity of occupants of neighboring properties, and a decline in the shared sense of community; and

WHEREAS, the Village Council finds that vacation rentals increase demands on water and wastewater and on the Village's code enforcement, police, fire and emergency services, beyond those demands created by residential dwelling units, thereby requiring the Village to increase its spending and collection of ad valorem tax revenues to fund these services; and

WHEREAS, short-term vacation rental use and longer term residential use are generally incompatible, due to the rapid turnover associated with short-term vacation rental use and its disruptive effect on the peaceful use and enjoyment of residential areas; and

WHEREAS, the primary reasonable investment-backed expectation of owners of residential dwelling units in the Village is the use of that unit as a residence, and not as a vacation rental; and

WHEREAS, short rental periods to transient occupants is a use that is more commercial in nature, that is best accommodated by hotels, motels and timeshares; and

WHEREAS, the Village Council finds that regulation of vacation rentals will contribute to the stability of existing residential neighborhoods; and

WHEREAS, regulation of vacation rentals will protect visitors to the Village by assuring that fire and safety inspections are periodically conducted, requiring that they receive necessary information about the dwelling which they have rented, and notifying them of the owner of the dwelling's obligation to provide for their safety and welfare; and

WHEREAS, regulation of vacation rentals is necessary in order to protect the public health, safety, and welfare of the Village, its residents and its visitors, and the Village Council therefore seeks to update and amend its regulation of rental properties; and

WHEREAS, the Village Council, sitting in its capacity as the Local Planning Agency, has reviewed this Ordinance and recommends approval; and

WHEREAS, the Village Council further finds that the adoption of this Ordinance is in the best interest and welfare of the residents of the Village.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:¹

Section 1. Recitals Adopted. That each of the above-stated recitals is hereby adopted and confirmed.

Section 2. Section 21-1 of the Village Code Amended. That Section 21-1 of the Code of Bal Harbour Village, Florida, is hereby amended to read as follows:

Sec. 21-1. Definitions and rules of construction.

Vacation Rental, Short-Term. A short-term vacation rental means any occupancy of a single-family, two-family, multi-family or townhouse dwelling unit for a period of time of not less than six (6) consecutive calendar months, or such dwelling unit which is advertised or held out to the public as a place rented for a period of time of not less than six (6) consecutive calendar months.

Section 3. Section 21-363 of the Village Code Created. That the Code of Bal Harbour Village, Florida, is hereby amended by adding a section to be numbered 21-363, which section reads as follows:

¹ Additions to existing Village Code text are shown by underline; deletions from existing village code text are shown by ~~striketrough~~.

Sec. 21-363. Vacation Rental Uses.

(a) *Intent.* Bal Harbour Village, Florida recognizes that the unregulated rental of single-family, two-family, multi-family or townhouse dwelling units by seasonal residents uniquely impacts established residential areas, and that it is therefore necessary and in the interest of the public health, safety and welfare to monitor and regulate the rental of such dwelling units.

(b) *Applicability.* This section shall apply to vacation rental uses, as defined in Section 21-1.

(c) *Vacation rentals prohibited unless in compliance with this chapter.* No person shall rent or lease all or any portion of a dwelling unit as a vacation rental as defined in Section 21-1 without first (i) obtaining a business tax receipt from the Village pursuant to Chapter 9 “Business Regulations and Business Tax” of the Code, and (ii) complying with the regulations contained in this section. No person shall allow occupancy or possession of all or any portion of a dwelling unit as a vacation rental if the dwelling is in violation of any zoning, building, housing, density, life/safety and fire codes or regulations. No person shall allow occupancy or possession of all or any portion of a dwelling unit for any period of time less than six (6) consecutive calendar months.

(d) *Vacation rental certificate.* Any property owner, who wishes to use his or her dwelling unit as a vacation rental, as defined in Section 21-1, must first apply for and receive a vacation rental certificate from the Village. A new vacation rental certificate is required for each rental period for which the vacation rental is rented. No more than two (2) vacation rental certificates shall be issued within a twelve-month period. Failure to comply with any of the requirements of this section shall be grounds for enforcement in accordance with Article V “Code Enforcement” of Chapter 2 “Administration” of this Code.

(e) Application for a vacation rental certificate. Each property owner seeking a vacation rental certificate shall, no later than fifteen (15) days prior to the scheduled date of the desired rental period, submit an application in a form specified by the Village Manager or designee, along with an application fee in an amount to be determined by resolution of the Village Council. At a minimum, the application shall include all of the following:

1. The name, address, phone number, and email address of the owner(s) of record of the dwelling unit for which a certificate is sought; and
2. The address of the unit to be used as a vacation rental; and
3. The name, address, phone number, and email address of the designated vacation rental agent; and
4. The owner's sworn acknowledgement that he or she has received a copy of this section, has reviewed it and understands its requirements; and
5. Proof of compliance with Chapters 212 (Florida Tax and Revenue Act) and 509 (Public Lodging Establishments), Florida Statutes, and Rules 69A-43 (Uniform Fire Safety Standards for Transient Public Lodging Establishments) and 69A-60 (the Florida Fire Prevention Code), Florida Administrative Code, where applicable; and
6. A copy of the valid annual vacation rental inspection report as required by subsection 11; and
7. A detailed sketch of the vacation rental property's floor and site plan, including but not limited to square footage, number of bedrooms, kitchen, pool and parking areas; and
8. The number and location of designated parking spaces legally available for occupants of the vacation rental, excluding public parking spaces; and
9. An indication of whether pets will be allowed in the vacation rental; and

10. The owner's agreement to use his or her best efforts to assure that the vacation rental use of the dwelling unit will not disrupt the residential character of the neighborhood, and will not interfere with the rights of neighboring property owners to the quiet enjoyment of their residences; and

11. A written agreement between the owner and the occupant(s) which shall acknowledge all of the following:

(i) the name of all persons who will be occupying the unit; and

(ii) the license tag numbers for all vehicles that the occupant(s) will be parking at the unit, with a total number not to exceed the number of legal parking spaces at the unit, as designated on the vacation rental certificate; and

(iii) the occupant(s)' agreement to abide by all the requirements of this section, and acknowledgement that his or her rights under the agreement may not be transferred or assigned to anyone else; and

(iv) the occupant(s)' acknowledgement and agreement that violation of the agreement or this section may result in immediate termination of the agreement and eviction from the vacation rental unit by the owner or resident agent, and potential liability for payment of fines levied by the Village.

12. Any other information that this section requires the owner to provide to the Village as part of application for a vacation rental certificate.

(f) *Annual inspections/Re-inspections of vacation rentals.*

1. Prior to approval of a vacation rental certificate, an inspection of the dwelling unit for compliance with zoning, building, housing, density, life/safety and fire codes or regulations is required to be conducted by a Village code inspector. If violations are

found, all violations must be corrected and the dwelling unit must be re-inspected prior to issuance of any vacation rental certificate as provided herein.

2. Dwelling units used for vacation rentals must be properly maintained and must be re-inspected annually.

3. If the code inspector(s) has made an appointment with the property owner to complete an inspection, and no adult person was at the dwelling unit to admit the inspector at the scheduled time, the applicant shall be charged a “no show” fee in an amount to be determined by resolution of the Village Council to cover the expense incurred by the Village.

4. If the inspector(s) is denied admittance by the property owner, or if the inspector(s) fails in at least three attempts to complete an initial or renewal inspection of the dwelling unit because there was no adult person present to admit him or her, the inspector(s) shall provide notice of failure of inspection to the property owner by certified mail or other legal service to the address shown on the existing vacation rental certificate or the application for vacation rental certificate. Within ten (10) days after receipt or refusal of such notice, the property owner shall arrange for the inspector(s)’ access to the dwelling unit for the completion of the required inspection.

(g) Code violations.

1. If an owner of a dwelling unit used for vacation rentals has been cited and found to be in violation of a zoning, building, housing, density, life/safety or fire code or regulation by the code enforcement special magistrate, the order of the special magistrate shall include payment of an administrative fee for each required inspection or re-inspection of the dwelling unit in an amount to be determined by resolution of the Village Council.

The required inspection fees shall be included as part of the administrative costs assessed by the Village and shall be included in any liens filed by the Village.

2. Each day of renting a dwelling unit for vacation rental use without having a valid vacation rental certificate shall constitute a separate and distinct violation of this section.

(h) *Vacation rental agent.*

1. The property owner shall designate a vacation rental agent on its vacation rental certificate application, and provide the agent's name, address, phone number, and email address. The property owner may serve as the vacation rental agent. Alternatively, the owner may designate as his or her agent any natural person 18 years of age or older, who is (i) customarily present at a business location within the Village for the purposes of transacting business, or (ii) actually resides within the Village. In order to be designated a vacation rental agent, a person must first present the Village with written certification that he or she agrees to perform the duties specified in 2. below.

2. The duties of the vacation rental agent are to:

- (i) be available at the listed phone number twenty-four (24) hours a day, seven (7) days a week to handle any problems arising from the vacation rental use; and
- (ii) be able and willing to come to the vacation rental dwelling unit within three (3) hours following notification from the Village of issues related to the vacation rental; and
- (iii) receive service of any notice of violation of this section; and
- (iv) monitor the vacation rental dwelling unit at least weekly to assure continued compliance with the requirements of this section.

3. Vacation rental agent status may be suspended or revoked by the Village Manager if a vacation rental agent fails to perform any of the above-listed duties, after proper notice and hearing. The Village shall maintain a written record of its contacts with vacation rental agents, including a notation of whether the agent responded within the three (3) hours and how the issue was resolved.

(i) *Suspension.* The Village Manager may suspend a person's vacation rental agent status for any or all vacation rental property in the Village for minor violations for a period of time not to exceed three (3) months, or until certain conditions have been complied with or violations cured.

(ii) *Revocation.* The Village Manager may revoke a person's vacation rental agent status for all vacation rental property in the Village for major or repeated violations. After revocation, the owner shall not reapply for a vacation rental agent status for any vacation rental property in the Village until the basis for the revocation has been resolved and in no event prior to six (6) months following the date of revocation.

4. An owner may change his or her designation of a vacation rental agent temporarily or permanently; however, there shall only be one (1) vacation rental agent for each vacation rental property at any given time. To change the designated agent, the owner shall notify the Village in writing of the name, contact information and certifications required in (h)1. above for the new vacation rental agent and pay the applicable fee, if any, determined by resolution of the Village Council. Any notice of violation or legal process which has been delivered or served upon the previous vacation rental agent, prior to the Village's receipt of notice of change of the vacation rental agent, shall be deemed effective service.

5. It shall be the sole responsibility of the property owner to appoint a reliable vacation rental agent and to inform the agent of his or her correct mailing address. Failure to do so shall not be a defense to a violation of this section. No property owner shall designate as a vacation rental agent any person who does not expressly comply with the provisions of this section. The property owner or the vacation rental agent shall be deemed to be the "violation" of this section as the term is used in Section 162.06, Florida Statutes. Service of notice on the vacation rental agent shall be deemed service of notice on the property owner, tenant and violator.

6. A person may serve as a vacation rental agent for one or more vacation rental property owners if:

(i) the agent provides the Village with written authorization from each owner represented; and

(ii) each authorization must state that the owner has received a copy of, has reviewed and understands this section; and

(iii) each owner must sign the authorization and acknowledge the requirements of this section.

(i) *Vacation rental occupants.*

1. The occupant(s) of each vacation rental dwelling unit shall receive a written copy of this section and the Village's pet, noise, and trash regulations.

2. Occupants may only park in the spaces designated on the vacation rental certificate sketch.

3. All occupants must evacuate from the vacation rental upon posting of any nonresident evacuation order.

(j) Vacation rental dwelling unit.

1. There shall be posted within the dwelling unit, all of the following information:

- (i) The name, address, phone number, and email address of the vacation rental agent; and
- (ii) The maximum occupancy of the unit; and
- (iii) The maximum number of vehicles that can be parked at the unit, along with a sketch of the location of the parking spaces; and
- (iv) The location of the nearest hospital and police station; and
- (v) A legible copy of the vacation rental certificate; and
- (vi) A legible copy of this section; and
- (vii) A legible copy of the agreement between the owner and the vacation rental occupant(s), for the duration of the rental period covered by that agreement.

2. Each vacation rental unit must contain the covered trash container(s) provided by the owner. Placement of trash container(s) for pickup shall be in compliance with Village regulations.

(k) No limitation of remedies. Nothing in this section shall limit the Village from enforcement of its Code, state or federal law by any other legal remedy available to the Village. Nothing in this section shall be construed to limit or supplant the power of the inspector(s), code enforcement inspector or code enforcement special magistrate under the Village's ordinances, rules and regulations and the authority granted under state law, to take necessary action, consistent with the law, to protect the public from property which constitutes a public nuisance as defined under state law or the Village's ordinances, codes or regulations or to abate a nuisance by any other lawful means or proceedings.

(l) *Sale or transfer of dwelling unit used for vacation rentals.* Whenever a dwelling unit used for vacation rentals is sold or otherwise changes ownership and the new owner desires to use the unit for vacation rentals, the new owner must schedule and obtain an inspection of the dwelling unit prior to application for a vacation rental certificate.

(m) *Appeals.* A revocation of vacation rental agent status by the Village Manager may be appealed to the Village Council, as provided in this subsection.

1. *Applicability.* A person may file an appeal of a revocation or suspension of his or her vacation rental agent status.

2. *Filing of Appeal.* The appeal shall be filed within thirty (30) days of receiving notice of the revocation or suspension by certified mail, in a form specified by the Village and accompanied by an application fee in an amount to be determined by resolution of the Village Council. Failure to file an appeal within thirty (30) days shall constitute a waiver of all rights to appeal the revocation or suspension.

3. *Notice and Scheduling of Appeal Hearing.* The public hearing on the appeal shall be scheduled for the first available Village Council meeting following completion of the Village's review and evaluation of the application or such other time as is mutually agreed upon between the applicant and the Village Manager.

4. *Appeal Hearing.* At the public hearing, the Village Council shall consider the appeal application, the relevant support materials, the Village Manager's recommendations, and public testimony given at the hearing. If, at any time during the public hearing, the Village Council determines that the appeal is based upon incomplete or inaccurate information or misstatements of fact, it may deny the appeal or refer the application back to the Village Manager for further review and revised recommendations. The Village

Council shall presume the original decision of the Village Manager was correct, and shall only overturn such decision where there has been an error of fact or law. At the close of the public hearing, the Village Council, by not less than a majority of the quorum present, shall approve a resolution granting, granting with conditions, or denying the appeal.

5. *Judicial Relief.* The applicant, or any aggrieved person who has opposed the appeal at the public hearing, may appeal the decision of the Village Council by filing a petition for writ of certiorari in the circuit court in and for Miami-Dade County, in accordance with the procedures provided by the Florida Rules of Civil Procedure and the Florida Rules of Appellate Procedure.

(n) A vacation rental shall not be eligible for a variance for special events pursuant to Section 11-30 of the Village Code; and

(o) If applicable, the vacation rental shall comply with the resort tax provisions provided in Chapter 18, Article II of the Village Code.

Section 4. Single Family Residential District Regulations Amended. That the Code of Bal Harbour Village, Florida, is hereby amended by amending Division 2 “R-1 Single Family Residential District”, to read as follows:

Division 2. R-1 Single Family Residential District.

Sec. 21-96. Permitted uses.

No Building or land shall be used and no Building shall be erected or constructed on any Lot in the R-1 Single Family Residential District except for the following uses:

- (1) Single-family detached dwelling.

(2) Parks, playgrounds or municipal buildings owned and operated by the Village.

(3) Accessory Uses incidental to and customary to single-family detached dwellings. No Accessory Building, attached or detached from the main premises, shall be allowed that is susceptible of being occupied for residential purposes (except by domestic servants).

(4) Vacation rentals in accordance with Section 21-363.

Section 5. Multiple Family Residential District Regulations Amended. That the Code of Bal Harbour Village, Florida, is hereby amended by amending Chapter 21 “Zoning”, Article III “District Regulations”, Division 5 “RM-1 Multiple Family Residential District”, Division 6 “RM-2 Multiple Family Residential District”, Division 7 “RM-3 Multiple Family Residential District”, Division 8 “RM-4 Multiple Family Residential District” and Division 9 “RM-5 Multiple Family Residential District”, to read as follows:

DIVISION 5. RM-1 MULTIPLE FAMILY RESIDENTIAL DISTRICT

Sec. 21-166. Permitted uses.

No Building or land shall be used and no Building shall be erected or constructed on any Lot in the RM-1 Multiple Family Residential District except for the following uses:

(1) Multiple-Family Dwellings or apartment buildings.

(2) Apartment Courts.

(3) Accessory Buildings.

(4) Vacation rentals in accordance with Section 21-363.

DIVISION 6. RM-2 MULTIPLE FAMILY RESIDENTIAL DISTRICT

Sec. 21-191. Permitted uses.

No Building or land shall be used and no Building shall be erected or constructed on any Lot in the RM-2 Multiple Family Residential District except for the following uses:

- (1) Multiple-Family Dwellings or apartment buildings.
- (2) Apartment Courts.
- (3) Accessory Buildings.
- (4) Vacation rentals in accordance with Section 21-363.

DIVISION 7. RM-3 MULTIPLE FAMILY RESIDENTIAL DISTRICT

Sec. 21-211. Permitted uses.

No Building or land shall be used and no building shall be erected or constructed on any Lot in the RM-3 Multiple Family Residential District except for the following uses:

- (1) Multiple-Family Dwellings or apartment buildings.
- (2) Apartment Courts.
- (3) Accessory Buildings.
- (4) Vacation rentals in accordance with Section 21-363.

DIVISION 8. RM-4 MULTIPLE FAMILY RESIDENTIAL DISTRICT

Sec. 21-236. Permitted uses.

No Building or land shall be used and no Building shall be erected or constructed on any lot in the RM-4 Multiple Family Residential District except for the following uses:

- (1) Multiple-Family Dwellings or apartment buildings.
- (2) Apartment Courts.
- (3) Accessory Buildings.
- (4) Vacation rentals in accordance with Section 21-363.

DIVISION 9. RM-5 MULTIPLE FAMILY RESIDENTIAL DISTRICT

Sec. 21-261. Permitted uses.

No Building or land shall be used and no Building shall be erected or constructed on any Lot in the RM-5 Multiple Family Residential District except for the following uses:

- (1) Multiple-Family Dwellings or apartment buildings.
- (2) Apartment Courts.
- (3) Accessory Buildings.
- (4) Parks, playgrounds, municipal buildings and Parking Lots owned and operated by the Village.
- (5) Apartment Hotels, excluding dining rooms.
- (6) Vacation rentals in accordance with Section 21-363.

Section 6. Ocean Front District Regulations Amended. That the Code of Bal Harbour Village, Florida, is hereby amended by amending Chapter 21 “Zoning”, Article III “District Regulations”, Division 10 “OF Ocean Front District”, to read as follows:

DIVISION 10. OF OCEAN FRONT DISTRICT

* * *

Sec. 21-281. Permitted uses.

No Building or land shall be used in the OF Ocean Front District and no Building shall be erected, constructed, reconstructed or structurally altered which is designed, arranged or intended to be used for any purpose, unless otherwise provided for in this chapter, except for one or more of the following uses:

* * *

(11) Vacation rentals in accordance with Section 21-363.

Section 7. **Severability.** That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not effect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand, notwithstanding the invalidity of any part.

Section 8. **Inclusion in the Code.** That it is the intention of the Village Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Bal Harbour Village; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word “Ordinance” shall be changed to “Section” or other appropriate word.

Section 9. **Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED AND ADOPTED on first reading this **17th** day of **May**, 2011.

PASSED AND ADOPTED on second reading this **31st** day of **May**, 2011.

Mayor Jean Rosenfield

ATTEST:

Ellisa L. Horvath, MMC, Village Clerk

APPROVED AS TO LEGAL SUFFICIENCY:

Village Attorney
Weiss Serota Helfman Pastoriza Cole & Boniske