

MEMORANDUM

TO: Rental Housing Subcommittee Members **DATE:** April 9, 2019

FROM: Fred Murry, Assistant City Manager
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SUBJECT: Rental Housing Code

This Memorandum brings together three topics the Rental Housing Subcommittee has been discussing – Landlord License Rental (No. 170873), Short-Term Vacation Rentals (No. 180399), and Energy Efficiency (No. 180591) into a single regulatory framework. Staff envisions the ordinance to create this new regulatory framework would delete the existing Article I. titled “Landlord Permits” in Chapter 14.5, City Code of Ordinances and create a new Article IV. titled “Rental Housing Code” in Chapter 13 of the City Code of Ordinances.

The following is a step-by-step guide to crafting a single regulatory framework, based on the Subcommittee’s discussions to-date:

What are the problems that currently exist (aka “findings of fact”)?

The City Commission will need to make findings of fact concerning the problems that exist that are creating the need for City regulation. This means locating and citing to some level of proof/documentation/common knowledge that rental units in the City do not currently meet the minimum housing code, are not energy efficient and do not contain life safety equipment.

What is the public purpose for the City to regulate?

The City Commission will need to articulate a public purpose (general health, safety and welfare) that supports the City regulation – such as “eliminating substandard rental dwelling units and ensuring that rental dwelling units within the City of Gainesville meet minimum housing code, life safety and energy efficiency standards and that enforcement mechanisms are in place to hold landlords accountable for compliance.”

Identify who/what is regulated?

The City Commission will need to identify who/what is regulated – such as a “regulated unit” means each dwelling unit (dwelling unit is currently defined in Sec. 30-2.1 of the City Land Development Code as “a room or rooms in a dwelling, other than a dormitory, comprising the essential elements of a single housekeeping unit. Each area with one address for billing, one electric meter, and/or one full kitchen shall be considered a separate dwelling unit”) located in a quadraplex, triplex, duplex or single-family

structure that is rented for periods of at least 30 days or 1 calendar month and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 month.

Note: The State has preempted the regulation of “public lodging establishments” in Section 509.032(7), Florida Statutes, as follows:

“(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.”

Section 509.013(4)(a), Florida Statutes, defines “public lodging establishment” as:

“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.”

Section 509.242, Florida Statutes, lists the following classifications for “public lodging establishments” that are regulated by the State:

“(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.”

Section 509.013(4)(b), Florida Statutes, excludes some types of non-transient units from the definition of “public lodging establishment”:

“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;” and

“[a]ny 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”

In addition, it should be noted there are several bills pending in the 2019 State Legislative Session that may preempt the City from regulating occupations (see HB 3 and SB 1748) and clarify the existing preemption on regulating vacation rentals (see CS/HB 987, SB 824 and SB 812). The State Legislative Session ends on May 3, 2019.

City staff is working to gain a better understanding of the existing state regulation of “public lodging establishments,” but for now it appears that the City is preempted from regulating and inspecting transient (meaning held out as regularly rented for less than 30 days) rentals and apartment buildings. The City will need to craft a definition of “regulated unit” that does not fall within the State statutory preemption.

What are the regulations?

The City Commission will need to specify the regulatory requirements, such as:

- A. Commencing October 2019, each owner of a regulated unit that is actively rented shall obtain an annual permit for each regulated unit as follows:
 - a. Apply and obtain permit within first month of tenant occupying the unit, and renew the permit each year thereafter. The applicant for a landlord permit shall comply with the following requirements.
 1. Submit to the City a receipt signed by the tenant(s) of each regulated unit, in which the tenant(s) confirm that the applicant provided them with a complete copy of the following documents and that the tenant(s) read the documents in their entirety: Chapter 83, Part II, Florida Statutes titled "Residential Tenancies"; this Article IV. "Rental Housing Code" of the City Code; and the current version of the "Landlord and Tenant Bill of Rights" prepared by the City.
 2. Certify that, in the event the city provides notice of repeated violations of the following City Codes occurring at the regulated unit: Noise (chapter 15); Animal control (chapter 5 and Alachua County Code); Solid waste (article III of chapter 27); Over occupancy (Section 30-4.10) Yard parking (subsection 30-56(c)(4)); Insects, storage, trash and yard maintenance (Section 13-171); or hazardous conditions (Section 13-181); the applicant will pursue all lawful remedies available under Section 83.56, Florida Statutes, regarding termination of the rental agreement due to the tenant's failure to comply with Chapter 83, Florida Statutes, the provisions of the lease or this Code.
 3. Certify that he/she is the fee simple owner of the regulated unit or is the agent of the fee simple owner of the regulated unit.
 4. Provide the name, address, and telephone number of a contact person who resides within Alachua County to receive communications from the city concerning the permit.
 5. Maintain a list of the names of the occupant(s) in each regulated unit, and provide such list to the city in a reasonable amount of time upon request.
 6. Allow inspection of the regulated unit for violations of this article, as well as violations of the housing code (article II of chapter 13 of the Code of Ordinances) at any reasonable time; however, this provision shall not be interpreted as authorizing the city to conduct an inspection of an occupied rental unit without obtaining either the consent of an occupant or a warrant.
 - b. Permits are valid from August 1 of each year (or date of issuance) to July 31 of following year;

- c. The permit fee is per property (defined as parcel of land with a property appraiser parcel ID number) based on number of number of regulated units under common ownership on that property – as an example based on the current landlord permit fees it would be \$147 for single unit, \$220.50 for two units, \$294 for three units and \$367.50 for four units. If the permit is applied for during the last half of the permit year (between February 1 – July 31), one-half of the permit fee is due.

Note: Section 166.221, Florida Statutes, limits the amount of fees that may be charged as follows: “A municipality may levy reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter.”

B. Each regulated unit must meet living standards as follows:

- a. By August 2019, each regulated unit must meet **life safety standards:** (see page 3 of self-inspection checklist attached as **Exhibit A**)
- b. By August 2020, each regulated unit must meet **minimum housing code standards:** (see pages 1 and 2 of self-inspection checklist attached as **Exhibit A**)
- c. By August 2021, each regulated unit must meet **energy efficiency standards:** (see page 3 of self-inspection checklist attached as **Exhibit A**)

C. Annual certification of self-Inspection of each regulated unit is required as follows:

Commencing August 1, 2019, each owner of a regulated unit (at time of permit application or renewal) shall self-certify compliance with the living standards then in effect. From August 2019 to July 2022, the City Code Enforcement Department will conduct random inspections to educate and promote voluntary compliance with the living standards.

D. Inspection by City Code Enforcement:

Commencing August 1, 2022, the City Code Enforcement Department will inspect ((insert percentage of)) regulated units for compliance with these regulations. This inspection cycle will repeat every ((insert number of)) years.

E. Enforcement and Penalties

- a. **Failure to apply for permit.** If the city manager or designee has reasonable cause to believe that a regulated unit is occupied without a permit in violation of this article, the owner(s) of the property shall be given notice that the owner(s) shall, within 30 days of the date notice was given, either: a) provide evidence that a permit is not required, or b) submit a permit application. Failure to either provide evidence that a permit is not required, or submit a permit application within 30 days of the date notice was given shall subject the owner(s) to a notice of violation of this article and code enforcement proceedings. Fines imposed by the code enforcement proceedings shall stop accruing,

and be calculated as due and payable to the city, upon the date of occurrence of any of the following events:

- (1) A landlord permit is obtained for the subject property;
- (2) The subject property is no longer occupied in violation of this article;
- (3) The subject property has been relinquished by the owner(s) by sale, foreclosure, or other action that dispossesses the owner(s) of title to the property; or
- (4) The landlord permit year for which the owner(s) is in arrears ends.

- b. Failure to meet a living standard, after warning and time to comply shall subject the owner(s) to a notice of violation of this article and code enforcement proceedings, including:
 - i. Fines
 - ii. Cannot obtain/renew permit until the regulated unit is in compliance.

Fiscal note

When more details are determined, Staff will prepare a budget estimate for the fiscal resources needed to administer and enforce a new regulatory framework.

EXHIBIT A to Memorandum dated April 9, 2019

DRAFT – City of Gainesville - Self Inspection Checklist

Owners or their designees should recognize that this list is used for compliance with the City Rental Housing Code. In addition to the Rental Housing Code, owners are responsible for ensuring their rental units are in compliance with other applicable provisions of the City of Gainesville Code.

	Compliance or Non-Compliance	N/A	Comments
MINIMUM HOUSING CODE			
Exterior			
Foundation in sound condition			
Exterior walls are free from damage			
Roof is in good repair			
House numbers are visible from the street			
Exterior lighting is in working order			
Exterior stairs, porches, and balconies are in good repair			
Exterior doors are weather tight and able to be locked.			
Windows are in good working order and free from damage.			
Screens in place where central air is not provided			
Landscaping			
Lawns are maintained			
Yards are free of Junk, Trash and Debris			
Trash containers are stored out of view except for pick-up day			
Building Miscellaneous			
Pools shall comply with all state, county and city code to include proper fencing			
Parking shall be restricted to approved parking plan with-in certain districts			
Interior/ All rooms			
Walls are free of holes and cracks			
Light switches work as designed and have cover plates			
Electrical outlets are functional and have cover plates			
Windows open as designed and lock closed			
Floor covers are free of trip hazards and are able to be kept clean			

	Compliance or Non-Compliance	N/A	Comments
Kitchen			
Stove/Range works properly with a minimum of three burners			
Stove hood system in place and functioning			
Kitchen sink has hot and cold water			
No plumbing leaks			
Counter top sound and able to be kept clean			
Refrigerator is a minimum of 5 cubic feet and working properly			
Bedroom(s)			
Switch controlling a light upon entering			
Minimum 50 square feet			
Window of at least 8% of square feet			
Window openable to at least an area of 20"X24"			
Bathroom(s)			
Floors and walls intact and water-resistant			
A window or ventilation system required			
All plumbing operational with hot and cold water and no leaks			
Switch controlling a light upon entering			
Vanity is sound condition			
Other/ Miscellaneous			
All electrical systems are in sound condition with no exposed wiring			
Electrical panel label clearly and of at least 100 AMPs			
Smoke detectors are required on each floor of a dwelling as well as outside each sleeping room			
Smoke detectors for the hearing impaired shall provide a signal approved for persons with such disabilities			
Property is free from insect infestation			
Heating system must be able to heat the entire home to 65°F			

	Compliance or Non-Compliance	N/A	Comments
Life Safety Items			
Carbon Monoxide alarms present in all dwellings using natural gas, propane, or fuel oil			
Fire extinguishers provided in kitchen			
Energy Efficiency			
Attic insulation minimum of R-19, except where there is insufficient space or the presence of attic flooring will not allow			
Attic access weather stripped and insulated to a minimum of R-19			
All accessible duct joints sealed and all ducts insulated			
Insect screens on all windows that can open			
Fireplace chimneys have working dampers, doors, or closures			
Plumbing system is free of leaks			
All showerheads with a 3.0 gal/min flow rate or less			
All faucets aerators with a 2.5 gal/min flow rate or less			
Water heater(s) have a properly functioning Temperature/Pressure Relief Valve (TPRV)			
Water heater pipes insulated for the first 3' from the unit (excepting gas units)			
All water lines not in enclosed space must be insulated			
Properly maintained refrigerator with door seal/gasket intact and clean coils			
HVAC filter(s) are new or clean at time of move-in			
HVAC system(s) have had maintenance performed by a currently licensed HVAC or Mechanical contractor within the year prior to move-in.			
Programmable thermostat connected to main HVAC system			