

City of Gainesville

*City Hall
200 East University Avenue
Gainesville, Florida 32601*



Meeting Agenda - Final

May 28, 2019

3:00 PM

City Hall Auditorium, 200 E. University Avenue

Rental Housing Subcommittee

*Commissioner David Arreola (Chair)
Commissioner Helen Warren (Vice-Chair)
Commissioner Gigi Simmons (Member)
Commissioner Adrian Hayes-Santos (Member)*

CALL TO ORDER**ROLL CALL****ADOPTION OF THE AGENDA****APPROVAL OF MINUTES**[190002.](#)**Approval of Minutes (B)****RECOMMENDATION**

The Rental Housing Subcommittee approve the minutes of April 16 and May 15, 2019.

[190002 April 16 Minutes 20190528.pdf](#)

[190002 May 15 Minutes 20190528.pdf](#)

DISCUSSION OF PENDING REFERRALS[180958.](#)**Rental Housing Subcommittee Draft Recommendations to the City Commission (B)**

Explanation: This agenda item is bringing the draft recommendations to the Rental Housing Subcommittee for final review and discussion before the recommendations are forwarded on to the City Commission.

The recommendations are categorized by the following agenda items under which they were discussed:

- (A) Renters' Rights and Responsibilities (No. 180653);*
- (B) Rental Housing Code (No. 180958) which combined the prior agenda items titled Landlord License Rental (No. 170873), Short-Term Vacation Rentals (No. 180399), Landlord Incentives Plan (No. 180798) and Energy Efficiency (No. 180591);*
- (C) Energy Efficiency Ratings (No. 181041); and*
- (D) City Regulation of Bed and Breakfast Establishments (which was raised at the May 15th meeting of the Committee and the Committee expressed interest in having a discussion on this topic).*

A fiscal note is included with each recommendation below.

- (A) Renters' Rights and Responsibilities (No. 180653)*

Recommendation #1: City create a Mediation Program to be administered by an Action Officer in the Office of Equal Opportunity. The City will need to develop mediation program guidelines and contract with

mediators to hear any disputes that are filed with the Action Officer.

Fiscal Note: Estimated salary for the Action Officer position is \$43,504 - \$62,732. Estimated cost for mediation is \$100-\$200 per mediation.

Recommendation # 2

City create a document titled Tenant Bill of Rights and Responsibilities.

Fiscal Note: None

Recommendation #3

City staff to work with landlord/tenant organizations to craft an education program.

Fiscal Note: Attached is a spreadsheet outlining the cost of a Public Awareness Campaign which estimates that cost at \$30,000.00. An additional cost of \$20,000.00 would cover the cost of initial educational videos and brochures. Total fiscal need is \$50,000.00 and an increment for \$150,000.00 was included in the 2020/2021 budget for "Housing Implementation Funds".

Recommendation #4

City adopt an ordinance that mirrors Alachua County's ordinance by prohibiting discrimination on the basis of citizenship status.

Fiscal Note: None

Recommendation #5

Landlord mitigation fund - maintain the direction given by the Joint City Commission/County Commission meeting.

Fiscal Note: \$15,000 to be budgeted in FY2019-2020 as discussed at the May 21st City Commission Budget Workshop.

(B) Rental Housing Code (No. 180958)

Recommendation #6

City adopt an ordinance creating the Rental Housing Code, as described in a Memorandum from Staff dated April 9, 2019. Fiscal Note: Total cost of rolling out of the Rental Housing Code including current staff is \$850,000.00.

When the Subcommittee discussed this recommendation at its May 15th meeting, the following two questions were raised and legal staff has provided a response as follows:

Question: Can the City use a portion of the regulatory fees collected under the Rental Housing Code to fund a forgivable loan program that would be open to rental property owners to obtain a loan to pay for some/all of the required minimum housing, energy efficiency and life/safety standards required by the Rental Housing Code, in exchange for the property owner maintaining the rental unit as an "affordable" rental unit for some specified period of time.

Staff response: No, staff does not believe that using regulatory fees to

support an affordable housing program would be legally defensible. Section 166.221, Florida Statutes, limits the amount of regulatory 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." This has been explained by the Florida Supreme Court as follows "It is, of course, well settled that the power to regulate includes the power to license as a means of regulating, and that a reasonable license fee may be charged in an amount sufficient to bear 'the expense of issuing the license and the cost of necessary inspection or police surveillance connected with the business or calling licensed, and all the incidental expenses that are likely to be imposed upon the public in consequence of the business licensed.'" *Tamiami Trail Tours, Inc. v. City of Orlando*, 120 So. 2d 170 (1960) citing *State ex rel. Harkow v. McCarthy*, 171 So. 314 (1936).

Question: To avoid the State preemption contained in Chapter 509, Part I, Florida Statutes, could the City regulate "public lodging establishments" (which include apartment buildings and transient rentals) by requiring them to pay a fee, obtain a permit and require that they either: (a) provide prospective tenants a written document that states something similar to "because this rental unit was not required to be inspected under the City's Rental Housing Code, it may not meet the minimum housing, energy efficiency and life/safety standards set forth in that Code", or (b) voluntarily submit to inspections under the Rental Housing Code?

Staff response: No, staff does not believe that would be a legally defensible regulatory program or regulatory fee, as it would impose a fee with no actual regulatory conditions and again, the City cannot impose regulatory conditions because of the State preemption. The 4th District Court of Appeals in Broward County v. Janis Development Corp., 311 So. 2d 371 (1975) considered a similar fee/permit requirement and held it to be an improper tax, because it did not meet the requirements of a regulatory fee. In doing so, the 4th DCA cited the Florida Supreme Court decision in Bateman v. City of Winter Park, 37 So.2d 362 (1948), 'The difference between a liquor license fee and a tax may be thus stated: Where the fee is imposed for the purpose of regulation, and the statute requires compliance with certain conditions in addition to the payment of the prescribed sum, such sum is a license proper, imposed by virtue of the police power; But where the fee is exacted solely for revenue purposes, and payment of such fee gives the right to carry on the business without the performance of any other conditions, it is a tax.

(C) Energy Efficiency Ratings (No. 181041)

The Subcommittee discussed this item on May 15th and asked staff to come back with further information.

REBATES AND INCENTIVES

Staff was requested to provide information on current GRU Rebates,

Low-income Energy Efficiency Programplus (LEEPplus), and discontinued rebates and incentive programs. The only rebates currently available are for the conversion of appliances from electric, LP, or fuel to natural gas. The LEEPplus is only available for GRU electric customers with at least one year of service at the current location that they both own and occupy; in addition, the home and customer must meet a number of other requirements. With the exception of gas rebates, LEEPplus, and solar, and at the direction of the City Commission, GRU discontinued all other rebate programs and incentives at the end of FY13 including the Low-Interest Loan Program, which was deemed to be not cost-effective. If a version of the Loan Program were recommended, a significant amount of time and effort would be needed to recreate it with new minimum requirements and financial options.

IN-HOUSE INSPECTIONS

Training for energy rating - H.E.R.S.: 55 hour classroom at a cost of \$4,000.00 per officer.

In-house energy efficiency inspections would take approximately three hours. The typical rental housing inspection takes approximately one hour so the total inspection would average 4 hours. Performing the energy efficiency inspections in-house would alter the budget impact described in the Memorandum provided for the May 15th meeting in the following manner: In-house inspections would increase the needed officers to 7 for a total salary and benefit annual need of \$423,500.00. It would also add a one-time cost of \$183,400.00, which includes vehicles, computers and training. It would be important to note that this certification would require recurring funding to maintain.

Training for energy rating - H.E.S. - Training is minimal.

A trainer would perform the training at our location and as many officers can attend as desired. The inspection would be able to be performed during the same time as the typical rental housing inspection.

PRIVATE SECTOR INSPECTIONS

Energy audit prices vary depending on the region and depth of service, typically from around \$300 to \$800. A quick search for availability of qualified inspectors came up with approximately 12 certified inspectors/companies within 100 miles of zip code 32653.

FISCAL NOTE: This is only the inspection portion of the Rental Housing Program and the budget impact would depend on the direction given by the Commission and no increment was included in the 2020/2021 budget at this time.

(D) City Regulation of Bed and Breakfast Establishments

This topic was raised at the May 15th meeting and the Subcommittee expressed interest in having a discussion on this topic. As discussed in the Memorandum from Staff dated April 9, 2019, State Law preempts the City from enacting a regulatory and inspection program for transitory rentals. The City currently has regulates bed and breakfast establishments in Sec. 30-5.4 of the City's Land Development Code as

follows:

“Sec. 30-5.4. - Bed and breakfast establishments.

- o Share Link*
- o Print*
- o Download (docx)*
- o Email*
- o Compare*

The following standards shall apply to all bed and breakfast establishments:

- A. The owner or manager shall live on the premises.*
- B. Separate toilet and bathing facilities for the exclusive use of guests shall be provided.*
- C. Cooking facilities shall be approved by the county health department. In residential zoning districts, cooking shall be for overnight guests and residents only. No cooking facilities shall be allowed in guest bedrooms.*
- D. Bed and breakfast establishments shall comply with appropriate health permits, building and fire codes, and business licenses, including but not limited to a license from the division of hotels and restaurants applicable to such use.*
- E. In addition to the parking required for the residence, one parking space shall be provided for each guestroom. The city manager or designee may vary the parking requirement for those properties listed on the local register of historic places based on site constraints, including small yards, inadequate space for parking, and the availability of on-street parking.*
- F. Any sign for a bed and breakfast located in a local historic district or listed on the local register of historic places shall be reviewed by the applicable city staff according to the general signage regulations and by the historic preservation board in accordance with the preservation design guidelines.”*

Fiscal Note: Provided in each Recommendation above.

RECOMMENDATION

Review the proposed recommendations and modify any recommendation and direct staff to schedule this item before the City Commission at a General Policy Committee for discussion and policy direction to City Staff.

Legislative History

4/16/19	Rental Housing Subcommittee	Approved, as shown above
5/15/19	Rental Housing Subcommittee	Discussed

[180958 Memo to Rental Housing Subcommittee re Rental Housing Code 2019](#)

[180958\(A\) Presentation Rental Housing Code 20190416.pdf](#)

[180958 Updated Memorandum dated May 7 2019 20190515.pdf](#)

[180958A PublicAwarenessCampaignCosts 20190528](#)

[180958B EmailreResponses 20190528](#)

[180593.](#)

Rental Housing Subcommittee Referral List (B)

RECOMMENDATION

Discuss

Legislative History

12/4/18	Rental Housing Subcommittee	No Action Taken
12/18/18	Rental Housing Subcommittee	No Action Taken
1/2/19	Rental Housing Subcommittee	Approved, as shown above
1/15/19	Rental Housing Subcommittee	Discussed
2/5/19	Rental Housing Subcommittee	No Action Taken
3/5/19	Rental Housing Subcommittee	Discussed
4/16/19	Rental Housing Subcommittee	Discussed
5/15/19	Rental Housing Subcommittee	Approved, as shown above

[180593 Rental Housing Subcommittee Referral List 20190528.pdf](#)

PUBLIC COMMENT

MEMBER COMMENT

NEXT MEETING DATE

ADJOURNMENT