

ARTICLE VI. - VACATION RENTALS

Sec. 23-70. - Purpose.

The town council finds that certain transitory uses of residential property tend to affect the residential character of the community and are injurious to the community. Therefore, it is necessary and in the interest of the public health, safety, and welfare to monitor and provide reasonable means for citizens of the Town of Bay Harbor Islands to mitigate impacts created by such transitory uses of residential property within the town. It is unlawful for any owner of any property within the geographic bounds of the Town of Bay Harbor Islands, Florida, to rent or operate a vacation rental of residential property contrary to the procedures and regulations established in this article or applicable state statute.

(Ord. No. 1003, § 1(Exh. A), 11-14-16)

Sec. 23-71. - Definitions.

For the purpose of this article, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. Words not defined shall be given their meaning as provided in section 23-1, Definitions, of the Code of Ordinances of the Town of Bay Harbor Islands, Florida.

Bedroom or sleeping room shall mean a private room planned and intended for sleeping, separated from other rooms by a door, and accessible to a bathroom without crossing another bedroom or interior room.

Certificate of compliance shall mean a document issued by the town finding the building, land use or site complies with the applicable Code regulations and procedures.

Garbage shall be interpreted as defined in section 9-21 of the Code of Ordinances.

Owner shall mean an individual, firm, association, syndicate, partnership, or corporation owning or having a proprietary interest in a parcel of land.

Person shall mean a corporation, company, association, society, firm, partnership, or joint stock company, as well as an individual, a state, and all political subdivisions of a state or any agency or instrumentality thereof.

Residential property refers to the specific multi-family residential zoning districts in sections 23-4 and 23-6.

Responsible party shall mean the owner or the person designated by the owner of the property to be called upon to answer for the maintenance of vacation rental property and for the conduct and acts of occupants of the vacation rental property.

Transient occupants (occupants) shall mean any person, or guest or invitee of such person, who occupies or is in actual or apparent control or possession of residential property registered or used as a vacation rental. It shall be a rebuttable presumption that any person who holds themselves out as being an occupant or guest of an occupant of the vacation rental is a transient occupant.

Vacation rental shall mean 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 rented to guests more than three times in a calendar year for periods 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 regularly rented to guests, but that is not a timeshare project.

(Ord. No. 1003, § 1(Exh. A), 11-14-16)

Sec. 23-72. - Registration required and application.

- (a) *Registration required.* It is unlawful for any person to allow another person to occupy any residential property as a vacation rental within the Town of Bay Harbor Islands, or offer such rental services within the town, unless the person has registered the vacation rental property with the town and the vacation rental property has been issued a business tax receipt (BTR) in accordance with the provisions of this article.

Application for registration. In addition to the standard town business tax receipt (BTR) application information and documentation, applications for registration shall set forth at a minimum:

- (1) The legal description of the property offered for rental (i.e., address, lot, block and subdivision name);
- (2) Name, address, and phone number of owner of said property;
- (3) Name, address, and emergency contact phone number of the responsible party for said property, which shall be 24-hour, seven days a week contact number;
- (4) Agreement by the responsible party that the phone number for the responsible party will be answered 24 hours a day, seven days a week by the responsible party;
- (5) Agreement by the owner and responsible party to all of the following:
 - a. That all vehicles associated with the vacation rental must be parked in compliance with the Code of Ordinances of the Town of Bay Harbor Islands;
 - b. That it shall be unlawful to allow or make any noise or sound that exceeds the limits set forth in Chapter 12, Article II, Noise anywhere in the town;
 - c. That the owner, responsible party and property shall comply with all applicable city, county, state, and federal laws, rules, regulations, ordinances and statues including, but not limited, to the Fair Housing Act. In addition to the prohibitions set forth in the Fair Housing Act, the owner and responsible party shall not refuse to rent the vacation rental or terminate a rental due to the sexual orientation or gender identification of the transient occupant/transient occupant applicant;
 - d. That no solid waste container shall be located at the curb for pickup before 6:00 p.m. of the day prior to pick up, and the solid waste container shall be removed before midnight of the day of pickup;
 - e. That whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance of a property, or, having been authorized, licensed, or invited, is warned by the owner or lessee, to depart the property and refuses to do so, commits the offense of trespass in a structure or conveyance; and
 - f. That the application and any related approvals are specific to the property identified in the application and approval; other properties are not jointly shared commodities and should not be considered available for use by transient occupants of the property which is the subject of the application.
 - g. That the subletting of any vacation rental property is strictly prohibited.
- (6) Proof of owner's current ownership of the property;
- (7) Proof of registration with, or exemption from, the Florida Department of Revenue for sales tax collection and Miami-Dade County for Tourist and Convention Development Taxes, where applicable;
- (8) Proof of licensure with, or exemption from, the Florida Department of Business and Professional Regulation for a transient public lodging establishment, where applicable; and
- (9) Proof of compliance with section 23-74.

- (10) Proof that notice has been provided to, and written consent has been given by the condominium, cooperative or management of the complex in which the vacation rental unit or units are proposed.

Submission of an incomplete registration application form shall result in rejection of the application.

- (b) *False information.* It shall be unlawful for any person to give any false or misleading information in connection with the application for registration required by this article.

(Ord. No. 1003, § 1(Exh. A), 11-14-16)

Sec. 23-73. - Fees for business tax receipt.

The town may charge reasonable fees to compensate for administrative expenses in the review, inspection and issuance of a vacation rental business tax receipt (BTR), and for enforcement of these Code provisions. The fees for a vacation rental BTR shall be provided for by resolution adopted by the town council of the Town of Bay Harbor Islands.

(Ord. No. 1003, § 1(Exh. A), 11-14-16)

Sec. 23-74. - Responsible party required.

- (a) Whenever any property is required to be registered under this article, the owner shall appoint a natural person who resides within 30 miles to serve as the responsible party for service of notices as are specified herein, and notices given to the responsible party shall be sufficient to satisfy any requirement for notice to the owner. An initial responsible party shall be designated and name submitted with the application for registration, and the town manager or his designee shall thereafter be notified of any change of responsible party within 15 days of such change. Further, it is the affirmative duty of the responsible party to:
 - (1) Inform all occupants, in writing, prior to occupancy of the property of applicable Town of Bay Harbor Islands ordinances concerning sex offenders and sex offender residency prohibition, noise, vehicle parking, garbage, and common area usage with a copy of the applicable town ordinances printed in the English and Spanish languages and posted prominently near the main entrance of the establishment;
 - (2) Maintain all properties under their control in compliance with the occupancy limits, as specified in this article, the Florida Building Code and the Code of Ordinances of the Town of Bay Harbor Islands, Florida, as determined by the building official or his designee;
 - (3) See that the provisions of this article are complied with and promptly address any violations of this Article or any violations of law which may come to the attention of the responsible party;
 - (4) Be available with authority to address and coordinate solutions to problems with the rental of the property 24 hours a day, seven days a week;
 - (5) Be situated close enough to the property as to be able to, and shall, respond to emergency calls within two hours of notification;
 - (6) Keep available a register of all occupants, which shall be open to inspection by authorized personnel of the town at all times; and
 - (7) Maintain the entire property free of garbage and litter that is not stored in authorized receptacles for collection in compliance with the applicable Code provisions.

Failure of the owner to report a change of the responsible party, or failure of the owner or responsible party to perform the tasks listed herein may result in those penalties listed in section 23-76.

(Ord. No. 1003, § 1(Exh. A), 11-14-16)

Sec. 23-75. - Standards and requirements for vacation rentals.

- (a) *Minimum requirements for issuance of a business tax receipt (BTR).* The town manager or his designee may issue a business tax receipt (BTR) to the applicant upon proof that the following has occurred:
- (1) The owner and responsible party completes the Town of Bay Harbor Islands Business Tax Receipt (BTR) application form pursuant to Chapter 13 of the Code of Ordinances with the supplemental vacation rental information set forth herein;
 - (2) A BTR from Miami-Dade County;
 - (3) A Florida Department of Revenue certificate of registration for purposes of collecting and remitting tourist development taxes, sales surtaxes and transient rental taxes, where applicable;
 - (4) A Florida Department of Business and Professional Regulations license as a transient public lodging establishment, where applicable;
 - (5) An affidavit, demonstrating initial and on-going compliance with vacation rental standards contained herein, plus any other applicable local, state and federal laws, regulations and standards to include, but not be limited to Chapter 509, Florida Statutes, and Rules, Chapter 61C and 69A, Florida Administrative Code; and
 - (6) A copy of the vacation rental/lease agreement form to be used when contracting with transient occupants.
- (b) *Vacation rental standards.* The following standards shall govern the use of any vacation rental as a permitted use:
- (1) *Minimum life/safety requirements:*
 - a. Swimming pool, spa and hot tub safety. A swimming pool, spa or hot tub shall comply with the current standards of Residential Swimming Pool Safety Act, Chapter 515, Florida Statutes.
 - b. Bedroom or sleeping rooms. All bedrooms or sleeping rooms shall meet the minimum requirements of the Florida Building Code.
 - c. Smoke and carbon monoxide (CO) detection and notification system. If an interconnected and hard-wired smoke and carbon monoxide (CO) detection and notification system is not in place within the vacation rental unit, then an interconnected, hard-wired smoke alarm and carbon monoxide (CO) alarm system shall be required to be installed and maintained on a continuing basis consistent with the requirements of Section R314, Smoke Alarms, and Section R315, Carbon Monoxide Alarms, of the Florida Building Code — Residential.
 - d. 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/level of the unit. The extinguisher(s) shall be installed on the wall in an open common area or in an enclosed space with appropriate markings visibly showing the locations.
 - e. There shall be posted, next to the interior door of each bedroom or sleeping room a legible copy of the building evacuation map—Minimum 8½ by 11".
 - (2) *Maximum occupancy.* The maximum vacation rental occupancy shall not exceed the smallest occupancy calculated pursuant to each of the following standards:
 - a. One person per 150 gross square feet of permitted, air-conditioned living space; and
 - b. Two persons per bedroom or sleeping room, meeting the requirements for a bedroom or sleeping room in the Florida Building Code, plus two additional persons that may sleep in one common area; and

- c. The maximum occupancy shall be limited to two transient occupants per sleeping room and two transient occupants per any other room in the vacation rental unit. As a way of example, this means a maximum of two persons per bedroom/maximum of two additional persons per living room/great room/den/etc. (does not include kitchens, bathrooms, closets, pantries, hallways, laundry rooms, and porches).
 - d. Three transient occupants per one off-street parking space legally available to the property, the exact number of which is determined by the requirement of section 23-24 of the Town of Bay Harbor Islands Code of Ordinances.
- (3) *Solid waste handling and containment.* Town solid waste containers shall be provided for the maximum transient occupancy permitted by this Article, as required in Chapter 9 of the Town of Bay Harbor Islands Code of Ordinances. Appropriate screening and storage requirements for solid waste containers shall apply per any development approval and be incorporated into the certificate. For purposes of this section, a solid waste container shall not be placed at curbside before 6:00 p.m. of the day prior to solid waste pickup, and the solid waste container shall be removed from curbside before midnight of the day of pickup.
- 4. *Minimum vacation rental/lease agreement wording.* The vacation rental/lease agreement shall contain the minimum information as provided for in this subsection.
- 5. *Minimum vacation rental lessee information.* The vacation rental lessee shall be provided with a copy of the information required in this subsection and the Owner or Responsible party shall post all of the following conspicuously within each vacation rental unit:
 - a. A statement advising the Occupant that any sound that is a noise disturbance as provided per definition in section 12-21 of the Code of Ordinances of the Town of Bay Harbor Islands is subject to Town Code enforcement, including but not limited to fines;
 - b. A sketch of the location of the off-street parking spaces available to the property;
 - c. The days and times of trash pickup and the solid waste handling and containment requirements of this article;
 - d. The location of the nearest hospital; and
 - e. The local non-emergency police phone number.
- (6) *Responsible party designation.* The owner shall act as, or retain at all times, a designated responsible party capable of meeting the duties provided in subsection 23-74.
- (7) *Advertising.* Any advertising of the vacation rental unit shall conform to information included in the vacation rental business tax receipt (BTR) and the property owner's approval, including but not limited to the maximum occupancy.
- (8) *Sexual offenders and sexual predators.* It is unlawful to allow another person to occupy a residential property as a vacation rental within the Town of Bay Harbor Islands, knowing or should have known that it will be occupied by a person prohibited from establishing a permanent residence or temporary residence at said residential property pursuant to section 14-17 of the Code of Ordinances, if such place, structure, or part thereof, is located within 2,500 feet of any school, designated public school bus stop, day care center, park or playground or other place where children regularly congregate.
- (9) *Posting of certificate of compliance.* The certificate of compliance shall be posted on the back of or next to the main entrance door and shall include at a minimum the name, address and phone number of the responsible party and the maximum occupancy of the vacation rental.
- (10) *Other standards.* The occupant shall be advised that all standards contained within the Code of Ordinances and Land Development Regulations of the Town of Bay Harbor Islands including, but not limited to: noise, setbacks, and storm-water, are applicable to the vacation rental and may be enforced against the occupant.

(Ord. No. 1003, § 1(Exh. A), 11-14-16)

Sec. 23-76. - Administration, penalties, and enforcement.

- (a) *Initial and annual compliance inspections of vacation rentals.* An inspection of the dwelling unit for compliance with this section is required prior to the initial issuance of a vacation rental business tax receipt (BTR). If violations are found, all violations must be corrected and re-inspected within 30 calendar days before the initial vacation rental BTR may be issued. Failure to correct deficiencies identified in the annual inspections within the timeframes provided shall result in the suspension of the vacation rental BTR until such time as the violations are corrected and re-inspected. Once the initial vacation rental BTR is issued, the town will periodically re-inspect the vacation rental unit on an as-needed basis, but not less than once every three (3) years from the date of issuance.
- (b) *Business tax receipt (BTR) not transferable.* No BTR issued under this article shall be transferred or assigned or used by any person other than the person to whom it is issued, or at any location other than the location for which it is issued.
- (c) *Expiration of BTR.* All BTRs issued under the provisions of this article shall be valid for no more than one year, and all BTRs shall expire on September 30th of each year. Fees for renewal and applicable late renewal fees shall be established by resolution of the town council.
- (d) *Revocation.*
 - (1) Any BTR issued pursuant to this article may be denied, revoked, or suspended by the town manager for the violation of this article, any provision of the Town of Bay Harbor Code of Ordinances, or federal or state law by the owner, responsible party or occupants. Such denial, revocation or suspension is in addition to any penalty provided herein.
 - (2) *Offenses/violations.*
 - a. Non-compliance with any provisions of this article shall constitute a violation of this article.
 - b. Separate violations. Each day a violation exists shall constitute a separate and distinct violation, except that maximum occupancy violations shall also be subject to subsection 23-76(d).
 - c. Sexual offender and sexual offender occupancy/residency. If a person or persons, as defined in section 14-17 of the Town Code, are found to occupy a vacation rental unit, all town issued BTRs or other rights to use a dwelling unit as a vacation rental shall be revoked immediately.
 - (3) *Remedies/enforcement.* Violations of this article shall be subject to penalties as part of a progressive enforcement program with the primary focus on compliance and compatibility with adjoining properties, versus penalties and legal actions. To accomplish a safe and effective vacation rental program it is key that vacation rental owners and responsible parties are responsive and responsible in the management of the property for compliance with this section. Code enforcement activities will be conducted in accordance with Florida Statutes Chapter 162 and Code of Ordinances of the Town of Bay Harbor Islands. The remedy/enforcement provisions set forth herein shall take precedent over other Town Code enforcement regulations. If an owner, as defined hereinabove, owns and operates multiple vacation rental units in the town, the cumulative offenses that occur in the vacation rental units shall be used in enforcement actions.
 - a. Warnings. A warning shall be issued for a first-time violation and have a correction/compliance period associated with it. Such a warning may include notice to other agencies for follow-up by such agencies, such as the Florida Department of Business and Professional Regulation, the Florida Department of Revenue, the Miami-Dade County Tax Collector and the Miami-Dade County Property Appraiser, as applicable. Non-compliance within a correction compliance period shall result in the issuance of a notice of violation (NOV).

- b. Fines per violation shall be as set forth in section 1-8 of the Town Code for the first, second, third and further repeat violations. The town shall prosecute a code violation and in such case a special magistrate shall be authorized to hold hearings, assess fines and order relief in lieu of any code enforcement board. The town may also rely on an appropriate enforcing agency at the state or local level.
 - c. Additional remedies. Nothing contained herein shall prevent the town from seeking all other available remedies which may include, but not be limited to suspension or revocation of a vacation rental BTR, injunctive relief, liens, and other civil and criminal penalties as provided by law, as well as referral to other enforcing agencies.
- (4) *Suspension of vacation rental business tax receipt (BTR)*. In addition to any fines and any other remedies described herein or provided for by law or equity, the Town of Bay Harbor Islands may suspend a vacation rental BTR for multiple violations of the maximum occupancy in any continuous 36-month period, in accordance with the following:
- a. Suspension timeframes.
 - 1. Upon a third violation of the maximum occupancy the vacation rental BTR shall be suspended for a period of 30 calendar days.
 - 2. Upon a fourth violation of the maximum occupancy the vacation rental BTR shall be suspended for a period of 12 calendar months.
 - 3. For each additional violation of the maximum occupancy the vacation rental BTR shall be suspended for an additional 12 calendar months.
 - 4. As related to violations of the town's sexual offender regulations found in section 14-7 of the Town Code and the provisions set forth herein, the town shall immediately revoke the vacation rental BTR indefinitely, and shall not re-issue a BTR until the police chief approves the re-issuance.
 - b. Suspension restrictions. An occupant may not occupy a vacation rental during any period or suspension of a vacation rental BTR.
 - 1. The suspension shall begin immediately following notice, commencing either:
 - i. At the end of the current vacation rental lease period; or
 - ii. Within thirty (30) calendar days, whichever date commences earlier, or as otherwise determined by the Town of Bay Harbor Islands.
- (5) Operation of a vacation rental during any period of suspension shall be deemed a violation pursuant to this article and shall be subject to daily fine, up to the maximum amount as otherwise provided in Florida Statutes for repeat violations, for each day that the Vacation Rental operates during a period of violation.
- (6) *Number of violations*. For purposes of this section only, violations shall be identified per the rental period or per every seven days, whichever is less and for only those violations in which a code enforcement citation or criminal charge was issued. Violations could potentially occur multiple times over the same rental period.
- If an owner, as defined hereinabove, owns and operates multiple Vacation Rental units in the town, all cumulative offenses that occur in the vacation rental units shall be used in enforcement actions.
- (e) *Complaints*. Whenever a violation of this article occurs, or is alleged to have occurred, any person may file a complaint. Such complaint, stating fully the causes and basis thereof, shall be filed with the town manager or his designee. The town manager or his designee shall promptly record such complaint, investigate, and take action thereon in accordance with this article.
 - (f) *Enforcement*. The town manager or their designee shall enforce the provisions of this article.
 - (g) *Vesting*.

- (1) Any existing, legally established Vacation Rental located in the RM-1, RM-2, RM-3, and B-1 zoning districts as of [the effective date of Ordinance Number 1003] shall be considered a vested vacation rental only as related to contracts entered into prior to the [the effective date of Ordinance No.1003]. Rental/lease agreements that were entered prior to November 14th, 2016, as evidenced by a written and validly executed rental agreement or contract provided to the town manager no later than November 14th, 2016 plus three months shall be considered vested.
- (2) Vesting shall:
 - a. Apply only to date specific rentals; and
 - b. Not apply to renewals of existing rental agreements or contracts which are at the option of either of the parties.
- (3) The town shall, at a minimum, provide notice of this article and vesting procedure by posting a notice at Town Hall, publishing an announcement in the community newsletter, and by adding provisions to the town's website.
- (4) All rental agreements entered into after November 14, 2016 shall comply with the provisions of this article. No vacation rental shall be occupied pursuant to a contract/lease entered into after November 14, 2016, until the owner has obtained the required vacation rental BTR.
- (5) A vested contract/lease transferred to a subsequent owner shall continue to be vested, but shall not be transferred to a different vacation rental property.

(Ord. No. 1003, § 1(Exh. A), 11-14-16)