

ORDINANCE NO. 2020 - 02

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, FLORIDA CREATING AND ADOPTING A NEW CHAPTER 74 OF THE TOWN OF MELBOURNE BEACH CODE OF ORDINANCES RELATING TO "VACATION RENTALS;" PROVIDING A GENERAL FRAMEWORK FOR THE REGULATION OF VACATION RENTALS; PROVIDING AUTHORITY, SCOPE AND PURPOSE; MAKING FINDINGS OF FACTS; PROVIDING FOR DEFINITIONS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR APPEALS; PROVIDING FOR CONSTRUCTION OF CHAPTER; REQUIRING VACATION RENTAL REGISTRATION; PROVIDING REQUIREMENTS FOR REGISTRATIONS AND INSPECTIONS; PROVIDING DUTIES OF VACATION RENTAL OWNERS AND RESPONSIBLE PARTIES; PROVIDING MINIMUM LIFE/SAFETY AND OPERATIONAL REQUIREMENTS; PROVIDING MAXIMUM OCCUPANCY AND GRANDFATHERING OF OCCUPANCY; PROVIDING GENERAL CODE COMPLIANCE REQUIREMENTS FOR VACATION RENTALS; PROVIDING FOR REQUIRED POSTING AND LEGAL AGREEMENT REQUIREMENTS; PROVIDING FOR EXEMPTIONS; PROVIDING A SERVERABILITY/INTERPRETATION CLAUSE; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES AND RESOLUTIONS; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING AN ADOPTION SCHEDULE.

BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF MELBOURNE BEACH, FLORIDA:

**SECTION 1.** A new Chapter 74 of the Town of Melbourne Beach Code of Ordinances, titled "Vacation Rentals" is hereby created and adopted to read as follows:

**CHAPTER 74: VACATION RENTALS**

**ARTICLE I. GENERAL PROVISIONS**

**§ 74-1. Authority, Scope, and Purpose.**

This Chapter is enacted under the home rule authority and power of the Town of Melbourne Beach in the interest of the health, peace, safety and general welfare of the citizens of the Town of Melbourne Beach.

Section 509.013, Florida Statutes, provides a distinction between "transient public lodging establishments," defined as dwelling units which are rented, advertised or held out for rental to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, and "nontransient public lodging establishments," defined as dwelling units which are rented, advertised or held

out for rental to guests for periods of at least 30 days or 1 calendar month, whichever is less.

Section 509.242(1)(c), Florida Statutes, further provides for a subset of transient public lodging establishments, classified as "vacation rental" which 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.

It is the intent of this Chapter to regulate vacation rental transient public lodging establishments as defined by Florida Statutes, which are located in the 1-RS, 2-RS, 3-RS, 4-RM, 5-RMO, and 8-B zoning districts of the Town of Melbourne Beach.

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 regulation 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."

In 2014, the Florida Legislature passed Senate Bill 356 (Chapter 2014-71, Laws of Florida) amending Florida Statutes, Section 509.032 (7)(b) 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."

The official statement of legislative intent of Senate Bill 356 as reflected in the House of Representatives' Final Bill Analysis, dated June 19, 2014, states that the "Effect of the Bill" is as follows:

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 regulation passed before that date that prohibits or restricts vacation

rentals based on the duration or frequency may continue to be enforced.

This Chapter does not prohibit Vacation Rentals, or the duration or frequency of Vacation Rentals, nor is it the intention of the Town of Melbourne Beach to do so, but rather, this Chapter is intended to address life, safety, and compatibility concerns in the interests of the health, peace, safety, and general welfare of the citizens and visitors to the Town of Melbourne Beach.

#### **§ 74-2. Findings of Facts.**

Based on information presented to the Town Commission Members by residents of Melbourne Beach and managers, owners, and operators of Vacation Rentals, the practical first-hand experience and observations of Town Commission Members, common sense deductions of Town Commission Members based on long-term experiences in Melbourne Beach and familiarity with the character of the Town's residential zoning districts, information learned by Town of Melbourne Beach Staff, information from the U.S. Census as well as evidence and testimony presented at public hearings before the Town Commission, and after consideration of the Short-Term Rental Housing Restrictions White Paper, prepared by Robinson & Cole, Attorneys at Law, in 2011, prepared for the National Association of Realtors®, the Town Commission finds:

(1) Residents residing within their residential dwelling units are inherently familiar with the local surroundings, local weather disturbances, local hurricane evacuation plans, and means of egress from their residential dwellings, thereby minimizing potential risks to themselves and their families.

(2) In contrast, transient occupants of Vacation Rentals, due to their transient nature, are typically not familiar with local surroundings, local weather disturbances, local hurricane evacuation plans, and means of egress from the Vacation Rentals in which they are staying, thereby increasing potential risks to themselves and their families, and putting an additional burden on, and potentially putting at risk, emergency personnel in the event of an emergency situation.

(3) Certain Vacation Rentals may be presently located within the 1-RS, 2-RS, 3-RS, 4-RM, 5-RMO, and 8-B zoning districts of the Town of Melbourne Beach.

(4) Vacation Rentals, left unregulated, can create negative impacts within residential neighborhoods due to excessive noise, parking and traffic problems, excessive use and impact on public services and public works, extreme size, and/or greater occupancy.

(5) Vacation Rentals situated within residential neighborhoods can disturb the quiet nature and atmosphere of the residential neighborhoods and the quiet enjoyment of residents of such neighborhoods.

(6) Vacation Rentals located within established residential neighborhoods can create negative compatibility impacts relating to extreme noise levels, late night activities, on-street parking issues, and traffic congestion.

(7) A residential dwelling is typically the single largest investment a family will make with the residents of the residential dwelling desiring the tranquility and peaceful enjoyment of their neighborhood without excessive noise and increased parking issues and traffic congestion caused by transient occupants of Vacation Rentals.

(8) According to the U.S. Census, (2010), the Town of Melbourne Beach has an average household size of 2.30 persons.

(9) According to the U.S. Census, (2010), the Town of Melbourne Beach has an average household size of owner-occupied units of 2.36 persons.

(10) According to the U.S. Census, (2010) the Town of Melbourne Beach has an average household size of renter-occupied units of 2.02 persons.

(11) Vacation Rentals situated in the 1-RS, 2-RS, 3-RS, 4-RM, 5-RMO, and 8-B zoning districts can and do create a great disparity in occupancy.

(12) The Town finds that such rentals increase the demands upon code enforcement, police, fire, and emergency services beyond those created by non-vacation rental residential dwelling units.

(13) Vacation Rental use and longer-term residential use and ownership can be generally incompatible, due to rapid turnover associated with short-term vacation residential use and its potentially disruptive effect on the peaceful use and enjoyment of residential areas.

(14) The primary reasonable investment-backed expectation of owners of residential dwelling units in the Town is that adjacent and surrounding residential dwelling units will be used as family-occupied residential units and not vacation rentals.

(15) Vacation Rentals are a use that is more similar to the character of the use of hotels, motels, and timeshares than to that of family-occupied residential units.

(16) The regulation of Vacation Rentals will contribute to the stability of existing residential neighborhoods.

(17) The regulation of Vacation Rentals will protect visitors to the Town by assuring that fire and safety inspections are periodically conducted, that they receive necessary information about the dwelling which they have rented, and notifying them of the owner of the dwellings obligation to provide for their safety and welfare.

(18) The regulation of Vacation Rentals is necessary in order to protect the public health, safety and welfare of the Town, its residents and its visitors.

**§ 74-3. Definitions.**

The following terms as used in this Chapter are defined as set forth hereinafter:

"Bedroom" means any room in a Vacation Rental which has a bed or other place for sleeping and a separate closet that is an integral part of the permanent construction within the bedroom or an ensuite bathroom, and complies with the Florida Fire Code and Florida Life Safety Code as a bedroom, but shall not include a bathroom, a kitchen, a dining room, or any main living area. If a room has been added, altered, or converted without any required building permit having been granted, such room shall not be deemed a bedroom. If a previously approved bedroom exists as of the effective date of this Chapter and does not have a separate closet that is an integral part of the permanent construction of the structure, but rather utilizes an armoire or other furniture piece for clothing storage, the requirement for a closet to qualify as a bedroom is waived.

"Town Code" means the Town of Melbourne Beach Code of Ordinances and Land Development Code, Appendix "A" to the Code of Ordinances, including, but not limited to, the Zoning Code of the Town of Melbourne Beach, Florida, the Comprehensive Plan, the Future Land Use Map, and any items incorporated by reference.

"Living Area" means the minimum floor area of a residential dwelling as measured by its outside dimensions exclusive of carports, porches, sheds and attached garages. As used in this Chapter, the total living area shall be computed as follows: The exterior dimensions of all enclosed spaces within the framework of the dwelling unit (length and width) multiplied and totaled, as follows:

- (1) Any room or area accessible from any other room or area within the framework shall constitute living area.
- (2) A room or area must be totally enclosed by walls and covered by roofing.
- (3) A room or area must be protected from the elements.
- (4) A utility room within the framework of the residential dwelling and accessible within the main living area constitutes living area.

"Occupant" means any person who occupies a Vacation Rental overnight.

"Owner Occupied" means the Vacation Rental is then occupied by person(s), at the Vacation Rental Owner's consent, who do not pay rent for the occupancy of the Vacation Rental, when such persons are members of the family of the Vacation Rental

Owner. "Family" shall be defined as provided in §1A-3, Appendix A, Land Development Code.

"Peer-to-Peer Platform/Entity" means any person, service, business, company, marketplace, or other entity that, for a fee or other consideration, provides property owners and responsible parties a platform or means to offer vacation rentals to transient occupant whether through the internet or other means.

"Responsible Party" shall mean the owner, or the person designated by the owner of a Vacation Rental to be called upon to answer for the maintenance of the Vacation Rental and the conduct and acts of the occupants of the Vacation Rental.

"Transient public lodging establishments" 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.

"Vacation Rental" is collectively a vacation rental as defined under Florida Statutes, and any transient public lodging establishment, which is operated in a dwelling unit or living unit as defined under §1A-3, Appendix A, Land Development Code in the 1-RS, 2-RS, 3-RS, 4-RM, 5-RMO, and 8-B zoning districts of the Town of Melbourne Beach.

"Vacation Rental Owner" is the fee simple owner of the Vacation Rental property, whether an individual, partnership, corporation, limited liability company, trust, or other entity. In the event the Vacation Rental Owner is not an individual, the Vacation Rental Owner shall designate a responsible natural person to perform the functions and duties of a Vacation Rental Owner as provided in this Chapter. The duties and functions of a Vacation Rental Owner may, at the option of the Vacation Rental Owner, be performed by an agent of the Vacation Rental Owner, so long as the Vacation Rental Owner notifies the Town in writing, on a form provided by the Town, of the identity and contact information of such agent, and the specific duties that the agent will be performing for the Vacation Rental Owner. The Vacation Rental Owner may change the designation of agent at any time through the filing of a new form and the payment of an administrative fee in an amount as set by resolution by the Town Commission. The Vacation Rental Owner shall be held responsible for all actions of such designated agent with respect to the applicable Vacation Rental.

**§ 74-4. Enforcement.**

Violations of this Chapter shall be enforced as code violations in accordance with the provisions of Florida Statutes, Chapter 162, and Article II of Chapter 11 of the Town of Melbourne Beach Code of Ordinances.

**§ 74-5. Appeals.**

Any decision of the Town Manager or his or her authorized designee relating to implementation of this Chapter shall be rendered in writing in appealable form, and reviewed by the Town Attorney if a notice by the Vacation Rental Owner or agent is filed with the Town Clerk within ten (10) days after the action to be reviewed. The Town Clerk or designee shall place the matter on the agenda of the next available meeting of the Town Commission, but no later than thirty-five (35) days after the notice by the Vacation Rental Owner or agent is filed, at which the matter will be reviewed. The decision of the Town Commission shall be final and shall be rendered in writing in appealable form. Such final decision may be reviewed as permitted under Florida law.

**§ 74-6. Construction of Chapter.**

This Chapter shall be liberally construed to accomplish its purpose of regulating Vacation Rentals, protecting the residential character of the 1-RS, 2-RS, 3-RS, 4-RM, 5-RMO, and 8-B zoning districts of the Town of Melbourne Beach, the health, safety, and general welfare of its residents and visitors, and the quiet enjoyment by Melbourne Beach residents of their residential property located in the 1-RS, 2-RS, 3-RS, 4-RM, 5-RMO, and 8-B zoning districts.

**§ 74-7 -74-14 Reserved.**

**ARTICLE II. VACATION RENTAL REGISTRATION**

**§ 74-15. Registration Required.**

As of August 1, 2020, a Vacation Rental registration shall be required to operate a Vacation Rental within the Town of Melbourne Beach in the 1-RS, 2-RS, 3-RS, 4-RM, 5-RMO, and 8-B zoning districts, utilizing forms promulgated by the Town, electronically or in hard copy. The Town may extend the date that such registration is required by notice on the Town's website should the Town not publish forms and fees for registration by July 1, 2020. Prior to the issuance of a Vacation Rental registration, the Responsible Party has the affirmative duty to ensure that the residential dwelling unit and property in or on which the Vacation Rental is or will be located, is in full compliance with the appropriate portions of Town of Melbourne Beach Code of Ordinances, the Florida Building Code, the Florida Administrative Code, and the Florida Fire Prevention Codes. A separate Vacation Rental registration shall be required for each separate residential dwelling unit constituting a Vacation Rental. The operation of a Vacation Rental without registration after the date registration is required shall be a violation of this Chapter, except in the instance of providing accommodations to fulfill a pre-existing contract.

**§ 74-16. Vacation Rental Registration.**

(a) A Vacation Rental Owner, Agent, or Responsible Party, as applicable, registering a Vacation Rental with the Town shall submit to the Town a completed registration form, utilizing a form promulgated by the Town, together with all applicable registration and inspection fees in the amount set by resolution of the Town Commission.

(b) A registration application shall include the following:

- (1) Full address of the Vacation Rental property being registered, along with proof of ownership;
- (2) Name, physical address, phone number, and e-mail, of the Vacation Rental Owner;
- (3) Name, physical address, e-mail, and emergency contact phone number of Responsible Party for the Vacation Rental, which shall be a twenty-four (24) hour, seven (7) days a week contact number;
- (4) The Vacation Rental's current and active license number as a transient public lodging establishment issued by the Florida Department of Business and Professional Regulation (DBPR), if the registrant has such license;
- (5) A copy of the Vacation Rental's current and active certificate of registration with the Florida Department of Revenue and Brevard County for sales and Tourist Development Tax collection, respectively, if the registrant has such certificates or accounts; unless a peer-to-peer platform entity through which the vacation rental is booked will be remitting all such taxes associated with the Vacation Rental on the Responsible Party's behalf;
- (6) Business tax receipt from the Town of Melbourne Beach, if applicable, in accordance with Chapter 65, Town of Melbourne Beach Code of Ordinances;
- (7) Statement attesting to the number of bedrooms and paved off-street parking spaces available on the property demonstrating compliance with §7A-50, Land Development Code regarding Off-Street Parking and affirming that, "Parking serving the Vacation Rental shall be in compliance with all Town Parking Requirements;"
- (8) Exterior site sketch. An exterior sketch of the Vacation Rental facility shall be provided. The sketch shall show and identify all structures, pools, spas, hot tubs, fencing, and uses, including areas provided for off-street parking. For purposes of the sketch, off-street parking spaces shall be delineated so as to enable a fixed count of the number of spaces provided. At the option of the Vacation Rental Owner, such sketch may be hand drawn and



need not be professionally prepared, but must be scaled, must show dimensions, and must show scale.

- (9) Interior building sketch by floor. A building sketch by floor shall be provided, showing a floor layout identifying all bedrooms, other rooms, exits, hallways, stairways, and safety equipment as applicable. At the option of the Vacation Rental Owner, such sketch may be hand drawn, and need not be professionally prepared, but must be scaled, must show dimensions, and must show scale.
  - (10) Acknowledgement signed by the Vacation Rental Owner, Agent, or designated Responsible Party, understanding and agreeing to initial and ongoing compliance with this Chapter and all other applicable local, state, and federal laws, regulations, and standards: and
  - (11) The landline telephone number on the main level and in the common area at the Vacation Rental with the ability to call 911 as required by Article III of this Chapter.
- (c) If a registration form is incomplete, the registrant will be notified of the deficiency, and be allowed fifteen (15) days to provide any missing information.

#### **§ 74-17. Modification/Change of Ownership of Vacation Rental Registration.**

An amendment of a Vacation Rental Registration Application and Affidavit of Compliance shall be required, with payment of the appropriate fee set by resolution, in the event that any of the following changes to the Vacation Rental are proposed:

- (1) An increase in the number of bedrooms in the Vacation Rental.
- (2) An increase or decrease in the number of parking spaces or a change in the location of parking spaces for the Vacation Rental.
- (3) A change in the designated Responsible Party.

A change of ownership shall require a new application and all required documents including appropriate fees set by resolution.

#### **§ 74-18. Duration of Vacation Rental Registration.**

A Vacation Rental Registration shall be valid for one (1) year after the date of registration.

#### **§ 74-19. Renewal of Vacation Rental Registration.**

A Vacation Rental Owner must renew its registration annually prior to the expiration date of the previous Vacation Rental Registration. At the time of said renewal, the Vacation Rental shall be subject to an annual inspection and applicable renewal fees shall apply.

**§ 74-20. Inspection of Vacation Rentals.**

- (a) Inspection of a Vacation Rental to verify compliance with the Florida Building Code and the Florida Fire and Life Safety Codes, which governed at the time of completion of the construction of the subject residential dwelling unit, shall be required subsequent to the initial registration of the Vacation Rental and annually after each renewal. If instances of noncompliance are found, all such instances of noncompliance shall be handled as other violations of the Florida Building Code and Florida Fire and Life Safety Codes are otherwise handled in the Town. Enforcement of violations of the Florida Building Code and Florida Fire and Life Safety Codes by the Town shall not affect rental contracts that pre-exist the effective date of this Ordinance unless such violations present a heightened threat the the public, health, safety, and welfare of the occupants of a Vacation Rental. This inspection fee shall be set by Resolution of the Town Commission.
- (b) Annual inspections to verify compliance with the Florida Building Code and the Florida Fire and Life Safety Codes, and the posting of notice requirements required herein shall be made by the Town or designated contractor through appointment with the Vacation Rental Owner, agent, or Responsible Party, as applicable. The annual inspection fee shall be set by Resolution of the Town Commission. If a Town inspector or designated contractor has made an appointment with Vacation Rental Owner or agent, as applicable, for an inspection, and the Town inspector or designated contractor is unable to complete the inspection as a result of an action or inaction of the Vacation Rental Owner, Agent, Responsible Party, or an occupant of the Vacation Rental, the Vacation Rental Owner shall be charged a "re-inspection" fee in an amount set by resolution of the Town Commission to cover the inspection expense incurred. The re-inspection fee shall be paid prior to scheduling the re-inspection. In addition, failure of a Vacation Rental Owner Agent, or Responsible Party, as applicable, to make the Vacation Rental available for an inspection within twenty (20) days after notification by the Town in writing that the Town is ready to conduct an annual inspection, shall be a violation of this Chapter punishable by a fine as set by resolution by the Town Commission. Such violation shall continue until the inspection is accomplished. Each day that such violation continues shall be a separate violation. Such violation may be enforced in accordance with § 74-4, Town of Melbourne Beach Code of Ordinances.

**§ 74-21. Sale of Vacation Rental Property.**

When the ownership of the Vacation Rental is sold or otherwise transferred, the new owner shall file a new registration with the Town within thirty (30) days from the date of the sale or transfer. Failing such application for registration, any Certificate of Compliance as to that Vacation Rental Property shall be null and void on the thirty-first (31st) day after such sale or transfer.

**§ 74-22. Vested Rights/Waiver/Estoppel.**

A Vacation Rental Registration shall not be construed to establish any vested rights or entitle the registered Vacation Rental to any rights under the theory of estoppel. A Vacation Rental Registration shall not be construed as a waiver of any other requirements contained within the Town of Melbourne Beach Code of Ordinances and is not an approval of any other Town Code requirement outside this Chapter. The registration of a Vacation Rental is not an approval of a use or activity that would otherwise be illegal under Florida law, the Florida Building Code, the Florida Fire Code or Life Safety Code, or in violation of the Town of Melbourne Beach Code of Ordinances.

**§ 74-23 - False Information.**

It shall be unlawful for any person to give any false or misleading information in connection with any application for registration, modification, or renewal of a Vacation Rental as required by this Chapter. Vacation Rental applications shall be sworn to under penalty of perjury. Any false statements made in an application shall be a basis for the revocation of any license issued pursuant to such application. In addition, such violations shall be may enforced as provided in § 74-4, Town of Melbourne Beach Code of Ordinances.

**§ 74-24 - Effective Date for Existing Vacation Rentals.**

The provisions of § 74-15 through § 74-23 will not become effective for existing Vacation Rental properties until August 1, 2020. If the registration forms to implement the required registration provisions of this Chapter are not available on July 1, 2020, the Town may extend the requirement to register Vacation Rental properties by notice on the Town's website.

**§ 74-25. Duties of Vacation Rental Owner or Responsible Party.**

- (a) Every Vacation Rental Owner or Responsible Party, as applicable, shall be available by phone at the listed phone number 24-hours a day, seven days a week to respond to police, fire, or other emergency personnel requests. Otherwise, response to attempted contact by the Town's Vacation Rental regulatory personnel shall be required only Monday through Friday, except holidays, from 9 a.m. to 5 p.m. Failure of the Vacation Rental Owner or Responsible Party, as applicable, to fulfill this duty, shall constitute a violation of

this Chapter which shall be punished by fine in accordance with § 74-4, Town of Melbourne Beach Code of Ordinances.

(b) Responsible Party. All vacation rental units, if not managed by the Vacation Rental Owner, shall have a designated Responsible Party.

(1) The Responsible Party shall be available 24 hours per day, seven days a week, for the purpose of promptly responding to complaints regarding conduct or behavior of Vacation Rental occupants or alleged violations of these regulations. The Responsible Party must have authority to immediately address and take affirmative action, within one (1) hour of notice from the Town, on violations concerning life-safety, noise, and parking violations. A record shall be kept by the Town of the complaint and the Responsible Party's response, as applicable.

(2) A Vacation Rental Owner may change his or her designation of a Responsible Party temporarily, up to thirty (30) cumulative days during any consecutive twelve (12) month period, or permanently: however, there shall only be one designated Responsible Party for each vacation rental property at any given time. To change the designated Agent or Responsible Party, the Vacation Rental Owner shall notify the Town in writing including all information required by § 74-16 (b)(3) Town of Melbourne Beach Code of Ordinances, along with a signed affidavit from the new Responsible Party acknowledging and agreeing to serve in this capacity and perform the duties of this Chapter. Any notice of violation or legal process which has been delivered or served upon the previous Responsible Party, prior to the Town's receipt of notice of change of the Responsible Party, shall be deemed effective service.

(3) It shall be the sole responsibility of the Vacation Rental Owner to appoint a reliable Responsible Party and to inform the Town of his or her correct mailing address, telephone number, and email address. Failure to do so shall not be a defense to a violation of this Section. Service of notice on the Responsible Party shall be deemed service of notice on the Vacation Rental Owner, occupant, or violator.

(c) A Vacation Rental Owner or Responsible Party is responsible for ensuring sexual offenders/predators as defined in § 775.21, § 943.0435, § 944.607, or § 985.4815 register at the Brevard County Sheriff's office and the Town of Melbourne Beach Police Department following the process set forth in § 775.21, 48 hours prior to arrival at a vacation rental, regardless of the length of stay.

A Vacation Rental Owner and/or Responsible Party shall comply with Florida Law, Chapter 775.215, as amended from time to time, pertaining to the distance separation of homes with a sexual offender/predator residing within the Vacation

Rental and any business, school, child care facility, park, playground, or other places where children regularly congregate.

Failure to comply with this section shall constitute a violation of this Chapter and shall result in the revocation of the Business Tax Receipt, if applicable, and Vacation Rental Registration for the Vacation Rental and other enforcement provisions outlined § 74-4, Town of Melbourne Beach Code of Ordinances.

- (d) The Vacation Rental Owner or Responsible Party shall inquire prior to check-in if any guest of at the Vacation Rental is a sexual offender/predator as defined in §775.21, §943.0435, §944.607, or §985.4815. If any guest of a Vacation Rental is a sexual offender/predator as defined in §775.21, §943.0435, §944.607, or §985.4815, the operator shall immediately notify the Melbourne Beach Police Department.
- (e) The Owner or Responsible Party shall provide the Town, and post in a conspicuous place in the living area of the Vacation Rental, the name, address, and day/evening telephone numbers of the Responsible Party who shall be available 24 hours per day, seven days a week for the purpose of promptly responding to complaints regarding conduct or behavior of Vacation Rental occupants or alleged violations of these regulations. Any change in the Responsible Party shall require written notification to the Town on forms provided by the Town and in a manner promulgated by the Town upon payment of the applicable fees.
- (f) Complaints made to the Responsible Party concerning violations of this Chapter by occupants of Vacation Rental shall be responded to within a reasonable time but in no instance greater than three (3) hours. A record of the complaint and of the Responsible Party's response shall be maintained in the file for the registration of the Vacation Rental and shall be available for inspection of the public during business hours of the Town in accordance with Florida's public record law.
- (g) It shall be the sole responsibility of the Vacation Rental Owner to appoint a reliable Responsible Party and to inform the Responsible Party of his or her correct contact information. Failure to do so shall not be a defense to the Town's claim of delivery of notice of a violation of this Chapter to the Responsible Party. No Vacation Rental Owner shall designate as a Responsible Party any person who does not expressly comply with the provisions of this section. The Vacation Rental Owner or the Responsible Party shall be deemed to be the "violation" of this Chapter as the term is used in F.S. § 162.06. Service of notice on the Responsible Party shall be deemed service of notice on the Vacation Rental Owner, occupant, or violator.

**§ 74-26 - § 74-34. Reserved.**

### **ARTICLE III. STANDARDS AND REQUIREMENTS FOR VACATION RENTALS**

#### **§ 74-35. Generally.**

The standards and requirements set forth in this Article shall apply to the rental, use, and occupancy of Vacation Rentals in the Town of Melbourne Beach.

#### **§ 74-36. Minimum Life/Safety and Operational Requirements.**

Vacation Rentals in the Town of Melbourne Beach shall meet all applicable standards under the Florida Statutes, the Florida Building Code, the Florida Administrative Code, the Florida Swimming Pool Safety Act, and the Florida Fire Code and Life Safety Code. Each Vacation Rental shall also have the following:

- (1) At least one landline telephone on the main level and in a common living area with the ability to call 911. The landline telephone number shall be registered at all times with Brevard County Emergency Management for the purpose of receiving emergency alerts for items including, but not limited to, mandatory evacuations for hurricanes and requests to limit utility usage. Additionally, the landline telephone number shall be registered at all times with the City of Melbourne, the water provider within the Town of Melbourne Beach, for the purposes of receiving boil water alerts and rescinding alerts.
- (2) A swimming pool, spa, or hot tub shall comply with the current standards of Florida Statutes, Chapter 515, Residential Swimming Pool Safety Act.
- (3) Smoke and carbon monoxide (CO) detection and notification system. There shall be a smoke and carbon monoxide detection system, installed and maintained in compliance with the requirements of Florida Building Code Residential, Sections R314 Smoke Alarms R315 Carbon Monoxide Alarms. Smoke and carbon monoxide detection systems shall have both audio and visual warning function capabilities.
- (4) Fire extinguisher. On each floor there shall be available a portable, multi-purpose dry chemical 2A: 1 0B:C fire extinguisher, which shall be installed and maintained in compliance with NFPA 10.
- (5) Battery powered emergency lighting. Battery powered emergency lighting, which illuminates automatically for at least one (1) hour when electricity is interrupted, is required at each building exit.

**§ 74-37. Maximum Occupancy Based on Site Capacity/Limitations/Grandfathering.**

- (a) The maximum occupancy of a Vacation Rental shall be stated in the Vacation Rental registration form and shall be limited to two (2) occupants per bedroom plus two (2) occupants in one (1) common living area, with a maximum capacity of twelve (12) persons in any Vacation Rental.
- (b) The maximum occupancy restriction as set forth above shall not apply when the property serves as the primary residence of, and is occupied by, the Vacation Rental Owner.
- (c) Notwithstanding the above, residential dwelling unit that is being used as a Vacation Rental on of the effective date of this Ordinance, may apply for grandfathered status, which, if granted, allows operation of the grandfathered Vacation Rental at a capped occupancy rate higher than twelve (12) occupants for a period not to exceed ten (10) years. Vacation Rentals that have an occupancy of twelve (12) occupants or less do not require grandfathering to maintain that occupancy.
  - (1) A grandfathered Vacation Rental shall have its maximum occupancy based upon two (2) persons per bedroom and two (2) additional persons per one (1) common living area being utilized for the occupants of the Vacation Rental at the time of application for grandfathered status. A change in the number of bedrooms at the Vacation Rental shall cause such Vacation Rental to lose its grandfathered status.
  - (2) The Vacation Rental Owner, Agent, or Responsible Party, as applicable, ("Grandfathering Applicant"), shall complete a Grandfathering Application as prescribed by the Town, which shall be submitted under oath and upon penalty of perjury and shall provide verifiable written proof of the number of bedrooms and living areas as herein defined in the Vacation Rental.
  - (3) The Grandfathering Application and supporting proof shall be submitted to the Town for review by Town staff which shall make a written determination as to the maximum occupancy of the grandfathered Vacation Rental.
  - (4) If the Town staff denies the requested occupancy level, the Town of Melbourne Beach shall notify the Grandfathering Applicant of the denial and shall provide the maximum approved occupancy level for the Vacation Rental in writing. Within twenty (20) days after the service of the written notice, the Grandfathering Applicant may appeal the denial of the Grandfathering Application to the Town Commission by filing a written appeal with the Town Clerk. At the hearing on said appeal, the Grandfathering Applicant my present evidence supporting the requested occupancy. A final determination of occupancy by the Town Commission

after the hearing of said appeal shall be final. Such final determination may be reviewed as permitted under Florida law. If no written appeal is filed within the twenty (20) day period stated herein, the occupancy determined by the Town staff shall be final.

- (5) An application for grandfathered status shall be submitted, no later than the time of initial registration of the Vacation Rental, along with fees established by the Town Commission by resolution. If the Town extends the date that registration is required, the deadline for the submission of Grandfathering Applications shall also be extended to the same extended date. If a Vacation Rental has been registered, but a final determination as to the occupancy level based upon grandfathering has not yet been made, such Vacation Rental may allow occupancy up to the occupancy requested in the Grandfathering Application until such time as a final determination as to occupancy has been made.
- (6) If it is reasonably determined by the Town staff that any information supplied to the Town of Melbourne Beach in support of a Grandfathering Application was intentionally false or fraudulent, such action shall be deemed to be a violation of this Chapter and may be enforced in accordance with § 74-4, Town of Melbourne Beach Code of Ordinances.
- (7) If a Vacation Rental registration remains expired period in excess of thirteen (13) months, any grandfathering determination shall be deemed abandoned and shall no longer be applicable to the previously registered Vacation Rental.

**§ 74-38. Parking, Solid Waste Disposal, Legal Compliance, Evacuations, Miscellaneous Provisions.**

- (1) All vehicles associated with the Vacation Rental, including visitors not residing at the Vacation Rental, must be parked in compliance with the Article III of Chapter 30 of the Town of Melbourne Beach Code of Ordinances. All vehicles utilized by the occupants of the Vacation Rental must be parked within a driveway located on the subject property. There shall be no sidewalk, on street, right-of-way, or grass parking.
- (2) Parking of trailers, boats, and recreational vehicles at Vacation Rentals shall be in accordance with § 7A-67, Appendix "A," Land Development Code.
- (3) Solid waste disposal (household garbage, recycling, and yard trash) at Vacation Rentals shall be in compliance with the Solid Waste Franchise Agreement adopted by the Town.



- (4) Vacation Rental occupants are required to comply with all local, state, and federal laws at all times, including those related to illegal activities, local nuisance ordinances, and emergency management.
- (5) Vacation Rental occupants are required to participate in all mandatory evacuations due to hurricanes, tropical storms, or other threats to resident safety, as required by state and local laws.
- (6) A Vacation Rental shall not be eligible for a special event permit under Chapter 52, Town of Melbourne Beach Code of Ordinances.
- (7) No temporary storage containers may be stored on the vacation rental premises. The term "temporary storage container" shall mean any container, structure, box, cylinder, or crate made of any material not permanently affixed to real property, that is enclosed or capable of being enclosed on all sides, top and bottom, that is stored, placed, located or put on any real property within the Town for the purpose of storing personal property, construction material, trash, refuse, garbage, debris, or other material or matter. Provided, however, with prior authorization from the Building Department a temporary storage container may be authorized during valid construction permit activity for this location.
- (8) Except for dwelling and living unit structures that constitute non-conforming structures pursuant to § 7A-83, Appendix A, Land Development Code, no accessory structure, vehicle, recreational vehicle, trailer, camper, or similar apparatus shall be utilized, rented, or registered as a Vacation Rental.

**§ 74-39. Required Posting of Local Information in a Vacation Rental and in Agreement.**

- (a) In each Vacation Rental, there shall be posted, in a prominent location on the inside of the Vacation Rental, the following written information:
  - (1) The official street address and landline telephone phone number of the Vacation Rental.
  - (2) The name, address, and phone number of the Vacation Rental Owner or Responsible Party as applicable.
  - (3) The maximum occupancy of the Vacation Rental.
  - (4) A copy of a document to be supplied by the Town which includes excerpts from Town of Melbourne Beach Code of Ordinances of general application relevant to Vacation Rentals, including, but not limited to, solid waste and recycling pick-up regulations and days/times, regulations related to sea turtles

and sea turtle lighting, parking, and noise regulations. Said document shall also be included as an addendum to each Vacation Rental Agreement. The Town will make available to Vacation Rental Owners and agents a copy of such document in digital format upon request and the Town will post such document on its website.

- (5) The maximum number of vehicles that will be allowed to park at the Vacation Rental, along with a sketch of the location of the paved off-street parking and a notice that visitors to the Vacation Rental, must comply with Article III, Section 30, Town of Melbourne Beach Code of Ordinances.
- (6) Phone number and address of Holmes Regional Medical Center Melbourne and Health First Viera Hospital and directions from the Vacation Rental to the hospital.
- (7) Emergency and nonemergency phone numbers for Melbourne Beach Police and Fire Departments.
- (8) Emergency evacuation instructions.
- (9) Rip Currents are prevalent in the Atlantic Ocean here in Brevard County. Information from the National Weather Service, available via from <http://weather.gov/mlb> shall be provided to occupants on the dangers of Rip Currents that occur in the Atlantic Ocean shall be prominently displayed.
- (10) Notice of the need for respect for the peace and quiet of neighborhood residents in compliance with Chapter 48, Town of Melbourne Beach Code of Ordinances. A statement shall specifically provide that occupants shall be prohibited from making excessive or boisterous noise in or about any residential dwelling unit at all times.
- (11) In addition, there shall be posted, next to the interior door of each bedroom, and the exterior doors exiting the Vacation Rental a legible copy of a building evacuation map - Minimum 8-1/2" by 11".
- (12) A Vacation Rental Agreement must include a list of occupant names and a record of the license plate numbers of vehicles used by occupants during any rental term or such information shall be provided in writing to the Vacation Rental Owner prior to, or at the time of, the commencement of the rental term. This information shall be maintained by a Vacation Rental Owner for no less than one (1) year from the commencement of the rental term.

**§ 74-40 - § 74-49. Reserved.**

#### **ARTICLE IV. EXEMPTIONS**

**§ 74-50. Exemption for Pre-Existing Rental Agreements.**

- (a) Notwithstanding any other provision of this Chapter, rental agreements with prospective occupants for Vacations Rentals that were pre-existing as of the effective date of this Ordinance (hereinafter "Pre-existing Agreements") are exempt from the provisions of this Chapter.
- (b) If a Vacation Rental Owner is cited for a violation of non-compliance with this Chapter, when the Vacation Rental is occupied under the terms of a Pre-existing Agreement, the Vacation Rental Owner may defend such violation based on the fact that the Vacation Rental was exempt from this Chapter due to it being occupied pursuant to a Pre-existing Agreement. Such defense shall be determined based upon the following information, and upon any additional information supplied by the Vacation Rental Owner:
1. Copy of deposit or payment information evidencing a Pre-existing Agreement;
  2. Copy of e-mail or other communication evidencing a binding Pre-existing Agreement;
  3. Information from the occupant confirming that there was a binding Pre-existing Agreement; or
  4. Written Vacation Rental Agreement dated prior to April 15, 2020.
- (c) Any person who supplies false or fraudulent information supporting a Pre-existing Agreement shall be in violation of this Chapter and shall be subject to enforcement in accordance with § 74-4, Town of Melbourne Beach Code of Ordinances.
- (d) Determination of exemption of a Pre-existing Agreement for a Vacation Rental from the requirements of this Chapter under this Section shall not exempt the occupants of the Vacation Rental from compliance with all other Town of Melbourne Beach Code of Ordinances requirements, including those related to noise, parking, nuisances.

**§ 74-51. Exemption for Owner-Occupied Vacation Rentals.**

The provisions of this Chapter shall not apply to owner occupied Vacation Rentals or property which qualifies as homestead under the Florida Constitution and Florida law. Any person desiring to qualify for the exemption herein shall file an affidavit in substantially the following form:

"Affidavit of Exemption"

State of \_\_\_\_\_  
County \_\_\_\_\_

Before me the undersigned authority personally appeared (hereinafter the "Owner") who upon oath deposes and states:

1. I am over the age of 18 and competent to make this Affidavit.
2. I own the following real property in the Town of Melbourne Beach, Brevard County, State of Florida:

(Legal description and Street Address)

3. Check one or both as applicable:

( ) I currently occupy the property described in Paragraph 2 above and have resided on this property continuously and uninterruptedly from (date) to the date of this Affidavit.

Or

( ) I have applied for and received the homestead tax exemption as to the above-described property, that is the tax identification parcel number of this property, and that the undersigned has resided on this property continuously and uninterruptedly from (date) to the date of this Affidavit.

4. The purpose of this Affidavit is to qualify for exemption from the Chapter 74 of the Town of Melbourne Beach Code of Ordinances regulating Vacation Rentals.

Sworn to (or affirmed) and subscribed before me by means of \_\_\_\_\_ physical presence or \_\_\_\_\_ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_ (year) by \_\_\_\_\_

"Notary"

## **SECTION 2. Severability/Interpretation.**

(a) In the event that any term, provision, clause, sentence or section of this Ordinance shall be held by a court of competent jurisdiction to be partially or wholly unenforceable or invalid for any reason whatsoever, any such invalidity, illegality, or unenforceability shall not affect any of the other or remaining terms, provisions, clauses, sentences, or sections of this Ordinance, and this Ordinance shall be read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or section did not exist.

(b) In interpreting the provisions of this Ordinance, the following rules and symbols shall apply:

(1) Words underlined are additions to existing text.

(2) Words ~~stricken through~~ are deletions from existing text.

(3) Asterisks (\* \* \*) indicates a deletion from the Ordinance of text existing in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the asterisks and not set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance.

**SECTION 3. Codification.** The provisions of this Ordinance shall be codified as, and become and be made a part of, the Town of Melbourne Beach Code of Ordinances. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention.

**SECTION 4. Ordinances and Resolutions in Conflict.** All ordinances or resolutions or parts thereof that may be determined to be in conflict herewith are hereby repealed.


**SECTION 5. Effective Date.** Except as otherwise provided, the provisions within this Ordinance shall take effect August 1, 2020.

**SECTION 6. Adoption Schedule.**

Passed by the Town Commission of the Town of Melbourne Beach on first reading on the 18<sup>th</sup> day of March, 2020 and adopted by the Town Commission of the Town of Melbourne Beach, Florida on final reading on the 20<sup>th</sup> day of May, 2020.

TOWN OF MELBOURNE BEACH,  
FLORIDA

By:   
\_\_\_\_\_  
JAMES D. SIMMONS, Mayor

ATTEST:   
\_\_\_\_\_  
Town Clerk

(TOWN SEAL)