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IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA

FLORIDA ASSOCIATION OF REALTORS,
a not-for-profit corporation d/b/a
FLORIDA REALTORS,

Plaintiff,

v.

Case No:
Division:

CITY OF MARCO ISLAND,

Defendant.
_____/

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR WRIT OF QUO WARRANTO

Plaintiff Florida Association of Realtors, a not-for-profit corporation d/b/a Florida Realtors ("Plaintiff" or "Florida Realtors"), files this complaint challenging the validity of Marco Island Ordinance 2022-08 (the "Vacation Rental Ordinance") against Defendant City of Marco Island (the "City").

Nature of the Action

The Florida Legislature has declared that, with the exception of ordinances in existence before June 1, 2011, local governments may not enact ordinances that "prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals." § 509.032(7)(b), Fla. Stat. Nevertheless, some local governments have continued to do just that.

In August 2022, the voters of Marco Island approved the Vacation Rental Ordinance, which forces Marco Island residents who rent their homes to tourists to register with the City and comply with overburdensome regulations that dramatically restrict vacation rentals to the point of prohibition. The voter-approved Vacation Rental Ordinance treats similarly situated residents

differently without rational reason, applies different noise restrictions to single family homes based on usage, creates a vacation registration and punishment program that violates multiple provisions of Florida Statutes, and has deprived these homeowners of the economic value and the reasonable and beneficial use and enjoyment of their properties.

Notably, the Marco Island City Attorney, the Marco Island Police Chief, and members of the City Council repeatedly warned that the Vacation Rental Ordinance violated citizens' First Amendment and Equal Protection rights, as well as numerous provisions of Florida law. The City Council, however, largely ignored their concerns and voted to remove the requirement that the City Attorney certify that the ordinance was legally sufficient prior to approving its enactment.

On December 5, 2022, the Marco Island City Council voted 4 to 3 to adopt the Vacation Rental Ordinance in spite of its deficiencies, justifying that the courts could sort things out. Because the Vacation Rental Ordinance violates Florida constitutional law, as well as numerous provisions of Florida Statutes, this Court should declare the Ordinance invalid and enjoin its operation.

Jurisdiction, Parties, and Venue

1. This Court has jurisdiction over this matter under article V, section 5(b) of the Florida Constitution and section 26.012 of the Florida Statutes. Venue is proper in Collier County under section 47.011 of the Florida Statutes. Plaintiff's action for declaratory and injunctive relief is authorized under sections 86.011 and 26.012(3) of the Florida Statutes. This Court has the power to issue writs of quo warranto under article V, section 5(b) of the Florida Constitution.

2. Plaintiff Florida Realtors is a 501(c)(6) trade association headquartered in Orlando whose 225,000 members include residential and commercial agents and brokers, appraisers, real estate counselors, property managers, and other real estate specialists. The mission of Florida Realtors is to support the American dream of homeownership, build strong communities and shape public policy on real property issues. To achieve its goals, Florida Realtors engages in extensive education and advocacy efforts both directly through its staff and in alliance with its local and regional Realtor associations and boards on issues affecting the real estate community and property owners in Florida. Marco Island's adoption of the Vacation Rental Ordinance has required Florida Realtors to divert its time, staff, and other resources and focus away from its other policy priorities toward efforts to educate and respond to concerns from its members confronted with Marco Island's adoption of an unlawful vacation rental registration program designed to deter homeowners from renting single-family homes on a short-term basis. Florida Realtors also brings these claims on behalf of its members, a substantial number of whom will be adversely affected by the Vacation Rental Ordinance. The relief requested in this lawsuit—declaratory and injunctive relief and a writ of quo warranto—is of a type appropriate for a trade association to receive on behalf of its members.

3. Defendant City of Marco Island is a political subdivision of the State of Florida and a municipality governed by the seven-member City Council. Art. VIII, § 2, Fla. Const. The Marco Island City Council has the authority to "exercise any power for municipal purposes," including the passage of ordinances, "except when expressly prohibited by law." § 166.021(1), Fla. Stat.; *id.* § 166.041, Fla. Stat.

4. All conditions precedent to the filing of this action have been performed or waived.

Common Factual Allegations

A. Voter Approval of a Rental Registration Program Designed to Prohibit Vacation Rentals on Marco Island

5. In February 2022, the Take Back Marco Political Action Committee ("Take Back Marco") sent the Marco Island City Clerk an affidavit for a committee in support of a Marco Island Referendum Petition that would place the Vacation Rental Ordinance on the ballot, pursuant to Article VI of the City Charter.

6. Take Back Marco made a number of revisions to the Vacation Rental Ordinance during its infancy. In March 2022, Take Back Marco sent the City a sixth revision of the Vacation Rental Ordinance and the initiative petition that Take Back Marco planned to circulate among Marco Island voters. A copy of Take Back Marco's sixth revision of the Vacation Rental Ordinance is attached as ***Exhibit A***.

7. The Vacation Rental Ordinance purported to implement a vacation rental registration program for short-term rentals of single-family homes on Marco Island, but only for properties in the Residential Single Family ("RSF") zoning district (the "Proposed Ordinance").

8. In reality, Take Back Marco designed the Vacation Rental Ordinance to discourage vacation rentals in certain neighborhoods to the point of constituting a de facto ban. The Vacation Rental Ordinance included a number of arduous and unreasonable requirements that would apply only to single family homes in the RSF zoning district and only to those homeowners that rented their properties to individuals for less than 30 days.

9. For example, the Vacation Rental Ordinance included a number of punitive measures, different standards for short- and long-term rentals, and different standards for homeowners who live in their homes versus homeowners who rented their homes on a short-term basis. None of these different standards could be supported by any rational basis.

10. These different standards included but were not limited to more strict noise ordinances; stronger restrictions on garbage containers, landlines, and parking; requirements to abide by an unwritten "'good neighbor' Code of Conduct Policy" that required renters to "be respectful of their neighbors and not disrupt the peace and tranquility of their neighbors" as well as prohibiting "raucous, loud, or unnecessary noise at any time" and "drunken, disorderly, or intoxicated conduct"; and requirements for annual fire inspections, exorbitant insurance requirements, and different occupancy/gathering restrictions. Violations of any restriction would result in excessive fines levied against homeowners with no warning or prior opportunity to correct the alleged violation.

11. On March 31, 2022, the City Attorney, Alan Gabriel, advised Take Back Marco that the Vacation Rental Ordinance was consistent with the requirements of Article VI. The City Attorney declined to comment on the legal sufficiency of the Vacation Rental Ordinance. A copy of the County Attorney's March 31st correspondence with Take Back Marco is attached as ***Exhibit B***.

12. On May 17, 2022, Collier County Supervisor of Elections Jennifer J. Edwards certified that Take Back Marco received enough signed petitions from registered voters to place the Vacation Rental Ordinance on the ballot during the August 23, 2022 primary election.

13. The next day, the City Attorney advised the City Council via a memorandum that the City Council was required to address the sufficiency of the Vacation Rental Ordinance pursuant to section 166.031, Florida Statutes. A copy of the County Attorney's May 18th memorandum to the City Council is attached as ***Exhibit C***. The City Attorney warned the City Council that the Vacation Rental Ordinance was inconsistent with section 509.032, Florida Statutes, and chapter 162, Florida Statutes. *See id.*

14. One week later, on May 26, 2022, the City Attorney sent the City Council another memorandum detailing 19 separate "areas of concern" that were "not intended to be all inclusive" and were only those that were "readily found but are not intended to demonstrate the most problematic areas of the [Vacation Rental] Ordinance." A copy of the County Attorney's May 26th memorandum to the City Council is attached as ***Exhibit D***.

15. The City Attorney advised that enacting the Vacation Rental Ordinance risked violating the Equal Protection Clause of the U.S. Constitution and numerous Florida Statutes. *See id.* The City Attorney advised the City Council that it had "options to address issues with the [Vacation Rental] Ordinance," including adopting the Vacation Rental Ordinance, adopting the City Council's own ordinance and working with Take Back Marco in the hopes Take Back Marco would withdraw its petition, presenting the voters with a competing ordinance, or filing a declaratory action to invalidate the petition. *See id.*

16. The City Council met on June 6, 2022, to discuss the Vacation Rental Ordinance. At the meeting, numerous City Council members cited the City Attorney's concerns regarding the Vacation Rental Ordinance's legal sufficiency and expressed concern about placing the Vacation Rental Ordinance on the ballot.

17. City Councilman Richard Blonna tried to minimize the City Attorney's memorandum by suggesting that the 19 things were merely "potential troublesome areas." The City Attorney responded, "I wouldn't have identified it if I did not believe that they were a problem."

18. Attorney and Vice Chair Jared Grifoni summarized the City Council's dilemma: "I think it really boils down to. . . Do we want to be sued now, or get sued later?" He advised that

the Vacation Rental Ordinance could not be adopted by the City Council as it was written because it would result in legal liability for the City.

19. Despite these concerns, the City Council voted 4 to 3 to place the Vacation Rental Ordinance on the August 23, 2022 primary election ballot.

20. On August 23, 2022, Marco Island voters voted in favor of the Vacation Rental Ordinance 56.9% to 43.1%.

B. The City Council Moves Forward with the Vacation Rental Ordinance, Despite its Legal Insufficiency

1. The City Council Considers the Vacation Rental Ordinance on First Reading in September 2022.

21. Although Article VI, Section 6.06 of the City Charter states that a voter-approved ordinance "shall be considered adopted upon certification of the election results." the Vacation Rental Ordinance did not go into effect immediately following certification.

22. Section 4 of the Vacation Rental Ordinance explicitly states: "This Ordinance shall become effective immediately upon its passage on second and final reading of the Marco Island City Council."

23. The City Attorney advised the City Council in a City Council meeting on September 19, 2022, that Section 4 of the Vacation Rental Ordinance "specifically requires that it come back to Council for your consideration for first and second reading."

24. Because the Vacation Rental Ordinance did not immediately go into effect, between August and September 2022, Take Back Marco voluntarily submitted some suggested revisions to the Vacation Rental Ordinance to City staff for the City Council's consideration.

25. In addition, the City Attorney, City Manager, Assistant City Manager, and City Council Chairman met with members of Take Back Marco in at least one closed-door meeting in an effort to try to negotiate other changes to the Vacation Rental Ordinance. Take Back Marco

agreed with some of these proposed changes and refused to accept other recommendations offered by City staff.

26. On September 19, 2022, the City Attorney issued another memorandum to the City Council advising that the City staff "put forward these edits in order to limit the City's potential liability by removing certain provisions that were ambiguous, unenforceable, or inconsistent with current City Code provisions and/or state law." A copy of the County Attorney's September 19th memorandum to the City Council is attached as ***Exhibit E***.

27. Pages 1 and 2 of the City Attorney's memorandum detailed the suggested recommendations that were approved by Take Back Marco. (Exh. E, pp. 1-2). Page 3 of the September 19th memorandum advised that Take Back Marco did not agree to a number of suggestions that were recommended by City staff. (Exh. E, p. 3).

28. One of the recommendations suggested by City staff that was approved by Take Back Marco was a removal of the Vacation Rental Ordinance's requirement that the City Attorney certify as to its legal sufficiency. (Exh. E, p. 2).

29. During a City Council meeting on September 19, Vice Chair Grifoni asked:

> So, we're going to have an ordinance that is not signed off for legal sufficiency by the City Attorney? I mean, what ordinance have we ever adopted in the history of the Marco Island City Council where the City Attorney's signature is not at the bottom of that document right next to the City Clerk and the Council Chairman? . . . And I would assume that's because the City Attorney is uncomfortable making an argument, stating, that the changes are legally sufficient.

30. In response, the City Attorney said that he intended to sign the Vacation Rental Ordinance as to "legal form . . . but I was removing the section about legal sufficiency because I didn't write the ordinance." The City Attorney subsequently conceded that he would feel more comfortable signing off on the Vacation Rental Ordinance's legal sufficiency if the City Council

incorporated the additional recommended changes from City staff that Take Back Marco had rejected.

31. Vice Chair Grifoni explained:

> I cannot vote for an ordinance that our own City Attorney won't stamp. I mean, that's just opening the City up to tremendous liability of which, there's already huge exposure here, as we all know, with the lawsuit that's been served. And we haven't even dealt with the Equal Protection issues by having certain classes of homes in certain zones treated differently than others.

32. City Councilor Jared Folley asked the City Attorney about his refusal to attest to the legal sufficiency of the Vacation Rental Ordinance, to which the City Attorney replied:

> You have seen my comments and legal opinions regarding certain parts of this ordinance that are contrary and I've basically have objected, strenuously I guess, to some extent, because I keep repeating the same objections. So how can I then sign a document that then says I'm agreeing to the legal sufficiency of those items that I've already said were not appropriate. I've attempted to try and fix the ordinance, to make it so that I'm comfortable and satisfied that we can manage it, but that's been over deaf ears; I mean, no one has paid attention to those comments.

33. During the same meeting, City Council Chairman Erik Brechnitz explained his support of the Vacation Rental Ordinance as follows:

> As all of you know, I opposed this ordinance at the start. And I opposed it because I thought there were flaws. And I still think there are flaws. But 57% of our residents did not agree with me. And I was elected by the population of Marco Island and I said at a meeting of the [Political Action Committee], which they asked me to attend, that I was going to vote against the ordinance, and I lost. And if I lost, I would support the ordinance, which is what I'm going to do. Because that's what the voters have asked me to do. So, as far as I'm concerned, it's still flawed, we may have court issues, and a judge may tell us whether or not it's legal. And that may be the only way to get resolution to this problem.

34. Chairman Brechnitz then asked Police Chief Tracy Frazzano to advise the City Council about her concerns with the Vacation Rental Ordinance's noise restrictions, which apply only to vacation rentals of single-family homes in RSF zoning. Police Chief Frazzano explained that the Vacation Rental Ordinance conflicted with the City's noise control ordinance.

35. In addition, Police Chief Frazzano explained that the noise restrictions were subjective. Instead of relying upon calibrated noise meters, enforcement would need to rely upon witness accounts of noise.

36. The Police Chief also explained that the noise restrictions would encompass and prohibit "animals, dog barking, babies crying, kids playing in the pool, people talking loudly by the pool, these could all be violations now that are reported based on this ordinance the way that its written and would be a violation based on the ordinance the way that it is written." Under the City's noise control ordinance, Police Chief Frazzano explained that "these are actually justifiable sounds" during daytime hours. In addition, the owner of the vacation rental is held to the Vacation Rental Ordinance noise restrictions if the owner is physically in his or her home, meaning that the owner is "being held at a different standard than everybody else on the island that owns a property on the island."

37. By a 5 to 2 vote, the City Council moved to accept only those recommended changes that were approved by Take Back Marco detailed on pages 1 and 2 of the City Attorney's memorandum. The City Council authorized the City Attorney to revise the Vacation Rental Ordinance in accordance with the recommendations that were approved by Take Back Marco and decided it would review the City Attorney's redlined Vacation Rental Ordinance on first reading for a second time on October 17, 2022.

2. The City Council Considers the Vacation Rental Ordinance on First Reading a Second Time in October 2022.

38. Following the September 19th City Council Meeting, the City Attorney created a revised redline version of the Vacation Rental Ordinance.

39. On October 17, 2022, the City Council considered the City Attorney's revised Vacation Rental Ordinance on first reading for the second time.

40. Vice Chair Grifoni commented on the Vacation Rental Ordinance's remaining constitutional and statutory flaws: "Those in favor of this ordinance have failed to bring us a legally sufficient ordinance. And in fact, those in favor of this ordinance specifically did not want to ask the City Attorney to bring us back a legally compliant document when we had this discussion two meetings ago."

41. He continued:

> So, what we have in front of us now is unenforceable. It's likely a violation of Florida and U.S. Constitutional law. This doesn't make any sense to anyone out there who is a disinterested, objective observer. . . . We do not have a legally valid ordinance in front of us, at least, as certified by the City Attorney.

42. Vice Chair Grifoni called the Vacation Rental Ordinance "a back-door attempt to ban rentals" and said that a "nonsensical" provision within the Vacation Rental Ordinance identified by the City Attorney "shines the light on the true motivation behind the push." He criticized provisions of the Vacation Rental Ordinance, noting: "A 30-day rental does not have to have a pool up to current [City] Code, but a 29-day rental would. . . . It doesn't make any sense. . . . The expert in the room is telling us that this ordinance is not legally sufficient."

43. City Councilor Folley asked the City Attorney if there were anything that was "uniquely concerning" about the Vacation Rental Ordinance, to which the City Attorney replied: "Well, identifying a single zoning category is one of the major issues that I've had and is unique." The City Attorney explained that another area of concern was "the language related to noise control," and how "you could have two houses together and the noise is different, the regulation is different for that house versus the next, and knowing when that house is being used in that capacity." The City Attorney confirmed this raised a potential Equal Protection issue.

44. City Councilor Becky Irwin commented:

> [W]ith the, the illegalities in this ordinance that [the City Attorney] just told us about, and we know that there are lawsuits against the City forthcoming, as

> someone who has a responsibility to protect the City, I feel that it would be malfeasance for me to be able to support this. I honestly, I, I can't do it. I cannot support something that is this egregious and, and is this all-around bad. So, if there's a way we can do a nice, simple registration that gets to the heart of what the issues are, fine. But all of this punitive action inside this ordinance I find appalling. And I can't support it.

45. City Councilor Richard Blonna, a strong supporter of the Vacation Rental Ordinance, commented that Councilor Irwin was a Florida Realtor, and as such, she should not be allowed to vote on whether to approve the Vacation Rental Ordinance because it would "directly impact [her] income." The City Attorney rejected Councilor Blonna's accusation that Councilor Irwin faced a conflict of interest.

46. City Councilor Joe Rola asked the City Attorney if he was concerned about "facing a certain segment of our population that is making money off of commercializing our residential districts." The City Attorney replied that he had concerns that a court of law might overturn parts of the Vacation Rental Ordinance and stated: "My job is to give you my best opinion and tell you what my beliefs are and let you take direction as you wish to, for your reasons, whether they be because of political reasons or not, that's up to you."

47. Councilor Rola rejected the City Attorney's suggestion that he was politically motivated and stated, "I do have a moral compass though. And that's what drives me on this." The City Attorney asked: "Are you suggesting that I'm making opinions based upon my moral, my morality? Is that what you are suggesting?" to which, Councilor Rola stated: "Well, ..." and the City Attorney replied, "I'm offended by that, if that's what you're doing." Chair Brechnitz shut down the two men's discussion, stating: "I don't think anybody questions your moral compass, Alan. I certainly don't."

48. In an attempt to eliminate one of the City Attorney's concerns about the legal insufficiency of the Vacation Rental Ordinance, Vice Chair Grifoni moved that the Vacation

Rental Ordinance be amended to apply across all zoning districts on Marco Island. He explained the Vacation Rental Ordinance

> only applies to RSF zoning. So, it does not apply to rentals in PUDs, it doesn't apply to rentals in condo associations, it doesn't apply to rentals, single-family home rentals outside of RSF. That's obviously a huge Equal Protection issue potentially, and I don't understand why we wouldn't want to include every single rental property on the island regardless of its zoning district under these, you know, criteria.

49. Vice Chair Grifoni's motion did not receive a second and failed.

50. The City Council voted 4 to 3 to approve the first reading of the Vacation Rental Ordinance with a non-substantive amendment and moved it to second reading.

51. The City Council also discussed the City staff's plan for implementation of the Vacation Rental Ordinance. The City Council, without a formal vote, authorized City staff to establish January 9, 2023 as the first date the City could begin receiving vacation rental property registrations and June 1, 2023 as the registration deadline.

3. The City Council's Approves the Vacation Rental Ordinance on Second Reading in December 2022 Despite Its Pervasive Constitutional and Statutory Violations.

52. On November 16, 2022, the City Attorney issued another memorandum to the City Council. A copy of the County Attorney's November 16th memorandum to the City Council is attached as ***Exhibit F.***

53. The City Attorney advised the City Council that there were 14 additional measures "that [the] City Council may wish to consider as further revisions after adoption on second reading." (Exh. F., p. 1). The memorandum then identified numerous issues for the City Council to consider, including those portions of the Vacation Rental Ordinance that the City Attorney had repeatedly warned the City Council constituted violations of constitutional and statutory law. (Exh. F).

54. For example, the November 16th memorandum warned:

1. The Ordinance ONLY applies to Residential Single Family ("RSF") zoned properties. As drafted these regulations would not apply to any vacation rental activity outside of the RSF zoning district. Although a large portion of the City's parcels authorized to be used for dwellings are zoned RSF, this Ordinance would not capture any residential dwelling in RMF-6, Multi-Family dwellings; RMF-12, Multi-Family dwellings; RMF-16, Multi-Family dwellings; PUD; or RT zoning districts. Neighboring property owners who are located within these other zoning districts within the City may endure similar impacts from rental properties.
2. The definition of "Noise" in Section 30-90.1(c) is vague as it refers to "any sounds emanating from the Transient Public Lodging Establishment. . . " The vagueness of the definition may make the Ordinance provisions related to noise difficult to enforce, as the definition could be considered very subjective and open to interpretation by the enforcing officer or a complaining neighbor.

. . . .

6. Section 30-90.8(b)(2) – There does not appear to be any basis for the limitation of no more than one and one-half times the maximum occupants to stay overnight at the location, or no more than 20 persons at any gathering in any Transient Rental.
7. In Section 30-90.8(b)(3), it is unclear if the exemption for two people would increase the occupancy limit to 22 people.
8. Section 30-90.8(d) requires certain information to be in the rental/lease agreement. The required inclusion of language in a lease agreement raises several concerns regarding a property owner's right to contract without required governmental language being included in the lease agreement. This issue should be examined further once the Ordinance is approved.

. . . .

10. Section 30-90.9 creates new noise regulations which only apply to a certain class of "speakers." The noise restrictions applied to individuals at Transient Rental properties must comply with constitutional restrictions on the regulation of speech.

. . . .

12. In Section 30-90.9, the use of the term "plainly audible," is vague and would allow for inconsistent noise regulation concerning the "plainly audible for a period of one minute or longer at a distance of 25 ft." standard between 10 pm and 7 am. There are concerns regarding the ability to enforce this regulation in light of existing First Amendment precedent. This regulation is also inconsistent with the definition of noise in the Ordinance.
13. Section 30-90.11 creates a fine program that may be inconsistent with both Chapter 162, Florida Statutes, and Chapter 14 of the City's Code.

(Exh. F).

55. The Marco Island City Council met on December 5 and considered the Vacation Rental Ordinance on Second Reading. A copy of the draft Vacation Rental Ordinance on second reading is attached as ***Exhibit G***.

56. The City Council informally agreed to change a number of provisions of the Vacation Rental Ordinance which the City Attorney did not deem "substantive" enough to require the City Council to schedule another first reading.

57. Nevertheless, significant constitutional and statutory infirmities remain. Newly elected City Councilor Darrin Palumbo explained: "It seems as if [the Vacation Rental Ordinance] was almost written to deter people from having a short-term rental, as opposed to enabling them to invite people on our terms and play by our rules."

58. The City Council then voted 4 to 3 to approve the Vacation Rental Ordinance, without having a final draft in front of them during the vote. Thus, the City Attorney and/or City staff were required to make changes to the draft on second reading to conform to the revisions adopted by the City Council during its December 5th meeting. A copy of the final, as-approved Vacation Rental Ordinance is attached as ***Exhibit H***.

C. The City of Marco Island's Adopted Vacation Rental Ordinance.

59. As adopted, the Vacation Rental Ordinance spans 14 pages and enacts Section 30-90 "Rental Registration Program," a new amendment to the Land Development Code found in Chapter 30, Article II "Zoning" of the City of Marco Island's Code of Ordinances.

60. The Vacation Rental Ordinance covers a large number of topics, including the creation of a vacation rental registration program, the application of different noise regulations for short-term vacation rentals, and a draconian fine/punishment program that contradicts state law and differs from other City Code violations.

61. Under the express terms of the Vacation Rental Ordinance,

> [i]t is unlawful for any person to allow another person to occupy any residential property that is a single-family, RSF zoned, house or dwelling unit as a Transient Rental within the City of Marco Island, or offer such property for rent as a Transient Rental within the City of Marco Island, unless the person has registered the property as a Transient Rental property with the City of Marco Island, or Designee, and the Transient Rental property has been issued a Certificate of Transient Rental Compliance in accordance with the provisions of this Section.

(Exh. H, p. 3). A person is allowed to use their property as a Transient Rental if the person has registered their property, paid the applicable fee, and the application status is approved or pending. (Exh. H, p. 4).

62. A "Transient Rental" is defined similarly to the definition of "transient public lodging establishment" found in section 509.013(4)(a), Florida Statutes, and clarifies that the definition applies to "any individually or collectively owned RSF zoned single-family home, irrespective of the number of bedrooms, that is rented to Transient Occupants (guests) more than three (3) times in a calendar year for periods of less than thirty (30) days, or which is advertised or held out to the public as a place regularly rented to Transient Occupants." (Exh. H, p. 3).

63. The City began accepting registration applications in March of 2023. The deadline to apply for registration is June 30, 2023. Property owners must renew their registration annually.

64. Any property owner who fails to register as required by the Vacation Rental Ordinance "shall be subject to a daily fine of $1,000.00 for each day the Transient Rental is operated without a valid Transient Rental Certificate of Compliance. (Exh. H, p. 11).

65. The registration application makes a number of requirements of Transient Rental property owners that are not required of rentals of 30 or more days in length, of properties that are not single-family homes, or of rentals outside the RSF zoning district, including but not limited to:

(a) A "Responsible Party," defined as the property owner or his or her designated person, who can "physically respond to the property within 1 (one) hour after notification" and who has an emergency contact number that is available and will be answered 24 hours a day, 7 days a week;

(b) Evidence of "continuously maintain[ed] liability insurance . . . with a minimum of at least $1 million or [to] solely conduct each short-term rental transaction through a platform that provides equal or greater liability insurance coverage"; and

(c) Evidence that the Transient Rental has satisfied the fire safety inspection requirements," within the Vacation Rental Ordinance, which require an annual fire safety inspection by a City of Marco Island Licensed Fire Inspector" as well as "any required corrections/modifications [that] must be completed."

66. The Vacation Rental Ordinance creates a new section entitled "Transient Rental Noise Control." This provision claims that "a much stricter/quieter set of noise parameters must be defined" for Transient Rentals because they are "a 'public lodging' use of a home in a residential neighborhood." (Exh. H, p. 10).

67. The Transient Rental Noise Control specifies:

> "***Any noise*** shall not be plainly audible for a period of one (1) minute or longer at a distance of twenty-five (25) feet or more when measured from the source property line between the hours of 10:00 p.m. and 7:00 a.m. daily and at a distance of fifty (50) feet or more when measured from the source property line between the hours of 7:00 a.m. and 10:00 p.m. daily.

(Exh. H, p. 10 (emphasis added)).

68. Under the Vacation Rental Ordinance,

> "Noise" is defined as ***any sounds*** emanating from the Transient Public Lodging Establishment that can be heard from any adjacent or non-adjacent property. This includes, ***but is not limited to***, human sounds, animal sounds, electronically generated sounds, musically generated sounds, or ***any other sounds that would not be heard if the Transient Public Lodging Establishment were not occupied***.

(Exh. H., p. 2 (emphasis added)).

69. Thus, a property owner violates the Vacation Rental Ordinance, if a neighbor 25 feet away at night or 50 feet away during the day can hear any sounds for one minute or longer,

regardless of whether those sounds emanate from a baby crying, dog barking in the yard, children playing outside, a lawnmower cutting the grass, or adults talking on a back porch.

70. All other individuals not subject to the Vacation Rental Ordinance, including property owners living in their homes next door to a Transient Rental, are subject to the noise control ordinance found in Chapter 18, Article IV, Section 18 of the Marco Island Code of Ordinances.

71. The Vacation Rental Ordinance also contains a provision that specifies the language that property owners must include within their "transient occupancy agreement[s]," which includes "the minimum information as provided for in subsections 30-90.8 (b), (d), and (e)," requires that a responsible transient occupant "sign[s] the transient occupancy agreement acknowledging the rules" and specifies that the agreement "shall contain a clause indicating that the occupant(s) acknowledge the rules and will agree to vacate the premises in the event of a violation of this Section upon request by the Owner or Responsible Party" including that "any such vacation shall not occur more than 12 hours upon such request." (Exh. H, p. 9).

72. A property owner not in compliance with the Vacation Rental Ordinance risks severe penalties.

73. "Non-compliance with ***any*** provisions of this Section shall constitute a violation of this Section." (Exh. H, p. 11 (emphasis added)). Furthermore, "[e]ach day a violation exists shall constitute a separate and distinct violation." (Exh. H, p. 11).

74. Violations "shall be subject to penalties," and any person "guilty of violating any of the provisions of this Section shall be deemed guilty of a civil infraction." (Exh. H, p. 11).

75. The Vacation Rental Ordinance authorizes fines in excess of the limits authorized pursuant to chapter 162, Florida Statutes. It gives the magistrate the authority to impose a fine of

up to $250 for the first violation, up to $500 for the second violation, up to $1,000 for the third violation, up to $2,000 for the fourth violation, up to $4,000 for the fifth violation, and up to $5,000 for the sixth violation and any subsequent violations thereafter within 12 months. (Exh. H, p. 11).

76. In addition, a City magistrate has the authority to "suspend a Transient Rental Certificate of Compliance" according to certain specified timeframes that escalate depending on the number of violations within a 12-month period, and is required to suspend the Transient Rental certificate in certain circumstances. (Exh. H, p. 12). Property owners are prohibited from "provid[ing] transient rental occupancy during any period of suspension of a Transient Rental certificate." (Exh. H, p. 12). A property owner, however, can "exercise[e] a long-term rental (any rental 30 continuous days or more) during a suspension period." (Exh. H, p. 12).

77. If a property owner operates a Transient Rental "during any period of suspension," it "shall be deemed a violation pursuant to this Section and shall be subject to a daily fine, up to One Thousand Dollars ($1,000.00) or to the maximum amount as otherwise provided in Florida Statutes for repeat violations, for each day that the transient rental operates during a period of suspension." (Exh. H, p. 13).

Count 1: Declaratory Judgment – Invalidity of Ordinance Preemption under Section 509.032, Florida Statutes

78. The allegations in paragraphs 1 through 78 are incorporated by reference.

79. The allegations in this Complaint demonstrate a bona fide actual, present, and practical need for a declaration by this Court that the Vacation Rental Ordinance is facially invalid and has been preempted under section 509.032(7), Florida Statutes.

80. In the absence of the declaratory relief sought in this action, Plaintiff and its members would be placed in doubt or uncertainty as to their rights with respect to the Vacation Rental Ordinance.

81. Under section 509.032(7)(a), "[t]he regulation of public lodging establishments . . . is preempted to the state."

82. Nevertheless, the Vacation Rental Ordinance defines Transient Rentals as "public lodging establishments," citing section 509.013(4)(a)1., Florida Statutes, that are operated in single-family homes within certain residential neighborhoods. (Exh. H, p. 3).

83. In addition, Section 509.032(7)(b) states: "A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals."

84. Although Section 509.032(7)(b) "does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011," the Vacation Rental Ordinance was enacted in December 2022.

85. Moreover, the City of Marco Island did not have a local law, ordinance, or regulation prior to June 1, 2011, relating to vacation rentals.

86. In addition, prior to the adoption of the Vacation Rental Ordinance, the City of Marco Island never prohibited or regulated vacation rentals in single-family homes within the RSF zoning district.

87. Following adoption of the Vacation Rental Ordinance, the City has no regulations applicable to vacation rentals outside the RSF zoning district or to non-single-family homes within the RSF zoning district.

88. Through the Vacation Rental Ordinance, the City has regulated the duration and frequency of rental of vacation rentals.

89. In addition, the Vacation Rental Ordinance effectively prohibits vacation rentals because it dramatically restricts vacation rentals, threatens property owners with severe penalties and punishments without warning or opportunity for correction, provides for the suspension of property owners' rights to operate vacation rentals, and forces property owners of single-family homes in certain neighborhoods to bear bureaucratic burdens and guidelines that are not borne by other property owners or renters in Marco Island.

90. It is adverse and antagonistic to the public interest and to the interests of the Plaintiff and its members to allow the Vacation Rental Ordinance to be enforced by Marco Island where the Vacation Rental Ordinance is preempted by state law, unlawful, and invalid.

91. The adverse and antagonistic interests are all before this Court by proper process and the relief sought is not merely a request for legal advice or an advisory opinion.

Count 2: Permanent Injunctive Relief – Invalidity of Ordinance Preemption under Section 509.032, Florida Statutes

92. The allegations in paragraphs 1 through 78 are incorporated by reference.

93. This is a claim for permanent injunctive relief to require Defendant the City of Marco Island, and all others acting in concert with it, to refrain from enforcement of the Vacation Rental Ordinance on the basis that the Vacation Rental Ordinance is pre-empted by state law under section 509.032(7) of the Florida Statutes.

94. Plaintiff and its members have a clear legal right to the relief requested. Florida law preempts local governments from regulating public lodging establishments. § 509.032(7)(a), Fla. Stat. Yet the Vacation Rental Ordinance defines vacation rentals as operating as "public lodging establishments," as defined in § 509.013(4)(a), Florida Statutes, and then places

numerous restrictions, regulations, requirements, and threats of penalties on those properties in violation of state law. (Exh. H).

95. In addition, Florida law preempts local governments from "prohibit[ing] vacation rentals or regulating the duration or frequency of rental of vacation rentals." § 509.032(7)(b), Fla. Stat. The Vacation Rental Ordinance was designed to and has the effect of prohibiting vacation rentals and regulating the duration and frequency of those rentals.

96. The Vacation Rental Ordinance is therefore preempted by state law and invalid.

97. Plaintiff and its members face a likelihood of irreparable harm if this Court does not grant the relief sought and allows the Vacation Rental Ordinance to be enforced notwithstanding the State's preemption of this area of law and the Vacation Rental Ordinance's invalidity.

98. Plaintiff and its members have no adequate remedy at law to address the harm described in this Complaint, as their injuries cannot be adequately remedied through money damages against Defendants.

99. The public interest strongly favors the entry of a permanent injunction and the resolution of this dispute to prevent the enforcement of an invalid vacation rental registration program.

Count 3: Declaratory Judgment – Invalidity of Ordinance
Conflict with chapter 162, Florida Statutes

100. The allegations in paragraphs 1 through 78 are incorporated by reference.

101. The allegations in this Complaint demonstrate a bona fide actual, present, and practical need for a declaration by this Court that the Vacation Rental Ordinance is facially invalid and conflicts with the requirements and prohibitions in chapter 162, Florida Statutes.

102. In the absence of the declaratory relief sought in this action, Plaintiff and its members would be placed in doubt or uncertainty as to their rights with respect to the Vacation Rental Ordinance.

103. Under chapter 162, Florida municipalities are authorized to provide for the enforcement of local ordinances. Local governments are authorized to "hold hearings and assess fines against violators of the respective . . . municipal codes and ordinances." § 162.04(2), Fla. Stat.

104. Pursuant to Section 162.06, Florida Statutes, when a violation is found by a local government, the violator shall be notified and "given a reasonable time to correct the violation." § 162.06(2), Fla. Stat. Only if "the violation continues beyond the time specified for correction" is the local government authorized to pursue a hearing and ultimately, impose a fine for the violation.

105. Nevertheless, the Vacation Rental Ordinance authorizes special magistrates to impose penalties and fines, without prior notice of violation or warning provided to the property owner. (Exh. H, p. 11). The Vacation Rental Ordinance also does not provide the property owner with the right to correct the alleged violation to avoid the imposition of penalties and punishments.

106. In addition, section 162.09(2)(a), Florida Statutes, authorizes a maximum penalty of $250 per day for the first violation and $500 per day for a repeat violation. To exceed this maximum penalty, a municipality must have a population equal to or greater than 50,000. § 162.09(2)(d), Fla. Stat.

107. The City of Marco Island has a population of less than 50,000. It is not authorized to utilize the fines in section 162.09(2)(d).

108. Nevertheless, the Vacation Rental Ordinance authorizes fines far in excess of the legal limits under section 162.09(2)(a), giving the City the authority to impose a fine of up to $250 for the first violation, up to $500 for the second violation, up to $1,000 for the third violation, up to $2,000 for the fourth violation, up to $4,000 for the fifth violation, and up to $5,000 for the sixth violation and any violations thereafter within 12 months. (Exh. H, p. 11).

109. Moreover, chapter 162 does not authorize the suspension of a property owner's rights to rent his or her property as a vacation rental as a punishment for a violation of a local government ordinance.

110. The Vacation Rental Ordinance, however, allows the City to suspend a property owner's right to rent his home on a short-term basis—and in fact, requires it in certain circumstances—as punishment for violating the ordinance. (Exh. H, p. 12)

111. It is adverse and antagonistic to the public interest and to the interests of the Plaintiff and its members to allow the Vacation Rental Ordinance to be enforced by Marco Island where the Vacation Rental Ordinance conflicts with state law and is unlawful and invalid.

112. The adverse and antagonistic interests are all before this Court by proper process and the relief sought is not merely a request for legal advice or an advisory opinion.

Count 4: Permanent Injunctive Relief – Invalidity of Ordinance Conflict with chapter 162, Florida Statutes

113. The allegations in paragraphs 1 through 78 are incorporated by reference.

114. This is a claim for permanent injunctive relief to require: Defendant the City of Marco Island, and all others acting in concert with it, to refrain from enforcement of the Vacation Rental Ordinance on the basis that the Vacation Rental Ordinance conflicts with state law under chapter 162 of the Florida Statutes.

115. Plaintiff and its members have a clear legal right to the relief requested. Florida law provides express guidelines as to the amounts and manners in which local governments can levy fines against residents for violations of local ordinances. Ch. 162, Fla. Stat.

116. Yet the Vacation Rental Ordinance ignores these requirements and authorizes penalties and punishments for violations of the ordinance that exceed Marco Island's authorization under Florida law.

117. The Vacation Rental Ordinance authorizes (1) the impositions of fines without providing the notice of alleged violation or opportunity to cure, as required by section 162.06; (2) fines well in excess of those amounts authorized by section 162.09; and (3) the City to suspend property owners' rights to rent their properties as vacation rentals, which is not an authorized power of local governments under chapter 162 or elsewhere in Florida Statutes. (Exh. H).

118. The Vacation Rental Ordinance therefore conflicts with state law and is invalid.

119. Plaintiff and its members face a likelihood of irreparable harm if this Court does not grant the relief sought and allows the Vacation Rental Ordinance to be enforced notwithstanding its conflict with state law and the Vacation Rental Ordinance's invalidity.

120. Plaintiff and its members have no adequate remedy at law to address the harm described in this Complaint, as their injuries cannot be adequately remedied through money damages against Defendants.

121. The public interest strongly favors the entry of a permanent injunction and the resolution of this dispute to prevent the enforcement of an invalid vacation rental registration program.

Count 5: Declaratory Judgment – Invalidity of Ordinance
Equal Protection Clause Violation; Article 1, § 2, Florida Constitution

122. The allegations in paragraphs 1 through 78 are incorporated by reference.

123. The allegations in this Complaint demonstrate a bona fide actual, present, and practical need for a declaration by this Court that the Vacation Rental Ordinance is facially invalid and unconstitutional because it violates the Equal Protection Clause found in article 1, section 2 of the Florida Constitution.

124. In the absence of the declaratory relief sought in this action, Plaintiff and its members would be placed in doubt or uncertainty as to their rights with respect to the Vacation Rental Ordinance.

125. Article I, section 2 of the Florida Constitution states: "All natural persons, female and male alike, are equal before the law and have inalienable rights, which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess, and protect property. . . ."

126. Municipal ordinances, like the Vacation Rental Ordinance, are subject to the Florida Constitution's Equal Protection Clause.

127. The City has violated Florida's Equal Protection Clause by treating property owners of single-family homes within the RSF zoning district who rent their properties on a short-term basis (and the renters who rent those properties) on Marco Island differently than property owners who live in their homes.

128. The property owners treated differently pursuant to the Vacation Rental Ordinance are similarly situated to the homeowners who are excluded from regulation.

129. The City acted to intentionally discriminate against Plaintiff, its members, and other property owners regulated by the Vacation Rental Ordinance.

130. Moreover, there is no rational basis or reason for the City to treat these property owners differently.

131. Numerous aspects of the Vacation Rental Ordinance violate Plaintiff's and its members' rights under the Equal Protection Clause under the Florida Constitution.

132. First, the Vacation Rental Ordinance applies only to rentals of single-family homes within the RSF zoning district. It thus does not apply to condominiums or other building types that are rented on a short-term basis within the RSF zoning district.

133. The Vacation Rental Ordinance also does not apply to vacation rental activity of single-family homes outside the RSF zoning district. This means that the Vacation Rental Ordinance does not apply to any residential dwellings in the RMF-6, Multi-Family Dwellings; RMF-12, Multi-Family Dwellings; RMF-16, Multi-Family Dwellings; PUD; or RT zoning districts.

134. The City Attorney identified this inconsistency as raising Equal Protection concerns, particularly considering that "[n]eighboring property owners who are located within these other zoning districts within the City may endure similar impacts from rental properties." (Exh. F, p. 1).

135. Despite these legal concerns, the City Council intentionally refused to apply the Vacation Rental Ordinance outside the RSF zoning district.

136. In addition, the Vacation Rental Ordinance places restrictions on occupancy and visitation that are not applicable to homeowners who live in their homes. The City Attorney's November 16th memorandum stated "There does not appear to be any basis for the limitation of no more than one and one-half times the maximum occupants to stay overnight at the location, or no more than 20 persons at any gathering in any Transient Rental." (Exh. F, p. 2).

137. As but another example, the Vacation Rental Ordinance applies different noise regulations to the occupants of vacation rentals than it does to homeowners who live in their homes. As Police Chief Frazzano explained to the City Council, the Vacation Rental Ordinance noise restrictions result in even the homeowner of a vacation rental "being held at a different standard than everybody else on the island that owns a property on the island."

138. The Vacation Rental Ordinance also treats property owners of vacation rentals differently in that it requires annual fire inspections, exorbitant insurance policies, and identification of the Responsible Party available to physically respond within one hour, 24 hours a day, 7 days a week (and requiring property owners to notify the City Manager or his or her designee within 10 days of any change in the Responsible Party). The City does not make the same requirements of similarly-situated property owners of long-term rentals or similarly-situated property owners of short-term rentals that are not regulated under the Vacation Rental Ordinance.

139. The City Attorney, numerous City Councilors, and the Police Chief warned multiple times that they were concerned that the Vacation Rental Ordinance violated the Equal Protection Clause. But the City Council ignored these warnings and intentionally passed the Vacation Rental Ordinance anyhow.

140. No rational basis or reason exists for the unconstitutional differences in how the Vacation Rental Ordinance treats homeowners within the RSF zoning district, as well as how the Vacation Rental Ordinance treats homeowners differently across various zoning districts.

141. The City Council failed to cite any rational reasons during its City Council meetings, and/or offered only arbitrary and capricious reasons for enacting the Vacation Rental Ordinance despite its constitutional flaws.

142. It is adverse and antagonistic to the public interest and to the interests of the Plaintiff and its members to allow the Vacation Rental Ordinance to be enforced by Marco Island where the Vacation Rental Ordinance violates Florida's Constitution and thus is unlawful and invalid.

143. The adverse and antagonistic interests are all before this Court by proper process and the relief sought is not merely a request for legal advice or an advisory opinion.

Count 6: Permanent Injunctive Relief – Invalidity of Ordinance Equal Protection Clause Violation; Article 1, § 2, Florida Constitution

144. The allegations in paragraphs 1 through 78 are incorporated by reference.

145. This is a claim for permanent injunctive relief to require: Defendant the City of Marco Island, and all others acting in concert with it, to refrain from enforcement of the Vacation Rental Ordinance on the basis that the Vacation Rental Ordinance violates the Equal Protection Clause found in Article 1, section 2 of the Florida Constitution.

146. Plaintiff and its members have a clear legal right to the relief requested. Floridians are guaranteed equal protection under the law, and local governments are not permitted to enact ordinances that violate Florida's Equal Protection Clause. Art. I, § 2, Fla. Const.

147. Yet the Vacation Rental Ordinance ignores the protections of the Florida Constitution and treats similarly situated individuals differently without any rational basis for the City's intentional discrimination.

148. The Vacation Rental Ordinance requires the property owners it regulates to, *inter alia*: (1) abide by more strict noise requirements; (2) carry exorbitant insurance coverage; (3) pay for and obtain a fire inspection annually; (4) abide by more strict controls on occupancy and visitation limits; and (5) identify and maintain a Responsible Party who is available to physically respond within one hour, 24 hours a day, 7 days a week (and requiring property owners to notify

the City Manager or his or her designee within 10 days of any change in the Responsible Party). (Exh. H).

149. The Vacation Rental Ordinance applies only to rentals of single-family homes within the RSF zoning district. It thus does not apply to condominiums or other building types that are rented on a short-term basis within the RSF zoning district.

150. The Vacation Rental Ordinance also does not apply to vacation rental activity of single-family homes outside the RSF zoning district. This means that the Vacation Rental Ordinance does not apply to any residential dwellings in the RMF-6, Multi-Family Dwellings; RMF-12, Multi-Family Dwellings; RMF-16, Multi-Family Dwellings; PUD; or RT zoning districts.

151. The City does not make the same requirements of similarly-situated property owners of long-term rentals or similarly-situated property owners of short-term rentals that are not regulated under the Vacation Rental Ordinance.

152. The City acted to intentionally discriminate against Plaintiff, its members, and other property owners regulated by the Vacation Rental Ordinance.

153. Moreover, there is no rational basis or reason for the City to treat these property owners differently. The City Council failed to cite any rational reasons during its City Council meetings, and/or offered only arbitrary and capricious reasons for enacting the Vacation Rental Ordinance despite its constitutional flaws

154. The Vacation Rental Ordinance therefore violates the Florida Constitution and is invalid.

155. Plaintiff and its members face a likelihood of irreparable harm if this Court does not grant the relief sought and allows the Vacation Rental Ordinance to be enforced notwithstanding its conflict with state law and the Vacation Rental Ordinance's invalidity.

156. Plaintiff and its members have no adequate remedy at law to address the harm described in this Complaint, as their injuries cannot be adequately remedied through money damages against Defendants.

157. The public interest strongly favors the entry of a permanent injunction and the resolution of this dispute to prevent the enforcement of an invalid vacation rental registration program.

Count 7: Declaratory Judgment – Invalidity of Ordinance
Vagueness & Overbreadth; Article 1, § 4, Article I, § 9, Florida Constitution

158. The allegations in paragraphs 1 through 78 are incorporated by reference.

159. The allegations in this Complaint demonstrate a bona fide actual, present, and practical need for a declaration by this Court that the Vacation Rental Ordinance is facially invalid because it is unconstitutionally vague and overbroad in violation of in article 1, section 4 and article I, section 9 of the Florida Constitution.

160. In the absence of the declaratory relief sought in this action, Plaintiff and its members would be placed in doubt or uncertainty as to their rights with respect to the Vacation Rental Ordinance.

161. Article I, section 4 of the Florida Constitution states: "Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. . . ."

162. Article I, section 9 of the Florida Constitution states: "No person shall be deprived of life, liberty or property without due process of law. . . ."

163. Municipal ordinances, like the Vacation Rental Ordinance, are subject to challenges under the Florida Constitution for vagueness and overbreadth.

164. The Vacation Rental Ordinance is unconstitutionally vague under the Florida Constitution's free speech and due process clauses.

165. The Vacation Rental Ordinance applies a different set of rules for Transient Rentals with regard to noise. The definition of "noise" in the Vacation Rental Ordinance is unconstitutionally vague, as it includes "any sounds emanating from the Transient Public Lodging Establishment that can be heard from any adjacent or non-adjacent property." (Exh. H, p. 2). There is no way to measure or objectively determine whether a sound falls within this definition.

166. The City Attorney in his November 16th memorandum warned the City Council that the definition of "noise" was "vague" and "may make the [Vacation Rental] Ordinance provisions difficult to enforce, as the definition could be considered very subjective and open to interpretation by the enforcing officer or a complaining neighbor." (Exh. F, p. 2). The City Attorney also warned the City Council that the Vacation Rental Ordinance lacks a definition for the term "plainly audible," which the City Attorney concluded would "allow for inconsistent noise regulation concerning" the standard at night, was inconsistent with the definition of "noise," and would lead to enforcement concerns. (Exh. F, p. 3).

167. On October 17, 2022, Marco Island Police Chief Frazzano warned the City Council that the noise regulations of the Vacation Rental Ordinance were subjective and would be difficult to enforce.

168. In addition, the noise regulations of the Vacation Rental Ordinance are overbroad in violation of the Florida Constitution's free speech and due process clauses.

169. The noise regulations include "any sounds," including but not limited to "any other sounds that would not be heard if the Transient Public Lodging Establishment were not occupied." (Exh. H, p. 2).

170. Police Chief Frazzano warned the City Council on October 17 that the noise regulations of the Vacation Rental Ordinance were overly broad and would encompass "animals, dog barking, babies crying, kids playing in the pool, [and] people talking loudly by the pool," among other sounds. Police Chief Frazzano explained that "these are actually justifiable sounds" that are swept up within the overly broad definitions in the Vacation Rental Ordinance.

171. Ordinances are void for vagueness where their prohibitions are not clearly defined and leave citizens to wonder as to whether their conduct would be prohibited. The Florida Supreme Court requires government regulations to "provide persons of common intelligence and understanding adequate notice of the proscribed conduct." *State v. Catalano*, 104 So. 3d 1069, 1075 (Fla. 2012).

172. In addition, "[t]he overbreadth doctrine prohibits the Government from banning unprotected speech if a substantial amount of protected speech is prohibited or chilled in the process." *Catalano*, 104 So. 3d at 1077 (internal quotation marks and citation omitted; brackets in original).

173. Here the Vacation Rental Ordinance is unconstitutionally vague as it fails to provide property owners and vacation renters with sufficient notice as to whether their conduct would be prohibited. It also encompasses "justifiable sounds" that are constitutionally recognized and protected.

174. The Vacation Rental Ordinance restricts sounds from properties rented as vacation homes to a greater degree than properties that are owner occupied. The Vacation Rental

Ordinance restricts the freedom of expression of occupants and property owners of vacation homes in a manner more intrusive than necessary.

175. The Vacation Rental Ordinance is an unreasonable restriction on Plaintiff's and its members' free speech and due process rights and thus is overbroad.

176. The Vacation Rental Ordinance is adverse and antagonistic to the public interest and to the interests of the Plaintiff and its members to allow the Vacation Rental Ordinance to be enforced by Marco Island where the Vacation Rental Ordinance violates Florida's Constitution and thus is unlawful and invalid.

177. The adverse and antagonistic interests are all before this Court by proper process and the relief sought is not merely a request for legal advice or an advisory opinion.

Count 8: Permanent Injunctive Relief – Invalidity of Ordinance Vagueness & Overbreadth; Article 1, § 4, Article I, § 9, Florida Constitution

178. The allegations in paragraphs 1 through 78 are incorporated by reference.

179. This is a claim for permanent injunctive relief to require: Defendant the City of Marco Island, and all others acting in concert with it, to refrain from enforcement of the Vacation Rental Ordinance on the basis that the Vacation Rental Ordinance violates the Florida Constitution's protections against vagueness and overbreadth found in Article I, section 4 and Article I, section 9 of the Florida Constitution.

180. Plaintiff and its members have a clear legal right to the relief requested. Floridians are guaranteed protection from vague and overly broad regulations, and local governments are not permitted to enact ordinances that violate these constitutional protections. Art. I, § 2, Fla. Const.

181. Yet the Vacation Rental Ordinance ignores these protections and violates Florida Constitution's free speech and due process clauses.

182. The Vacation Rental Ordinance applies a different set of rules for Transient Rentals with regard to noise, and the definition of "noise" in the Vacation Rental Ordinance is unconstitutionally vague. (Exh. H, p. 2). There is no way to measure or objectively determine whether a sound falls within this definition.

183. In addition, the noise regulations prohibit "any sounds" which would include sounds such as animals, dog barking, babies crying, kids playing in the pool, and people talking loudly by the pool, which Police Chief Frazzano explained "are actually justifiable sounds"

184. The City ignored the warnings from its City Attorney and Police Chief that the noise regulations in the Vacation Rental Ordinance were unconstitutionally vague, overbroad, swept up protected constitutional conduct, and would be difficult to enforce.

185. The Vacation Rental Ordinance restricts sounds from properties rented as vacation homes to a greater degree than properties that are owner occupied. The Vacation Rental Ordinance restricts the freedom of expression of occupants and property owners of vacation homes in a manner more intrusive than necessary.

186. The Vacation Rental Ordinance is an unreasonable restriction on Plaintiff's and its members' free speech and due process rights and thus is overbroad.

187. The Vacation Rental Ordinance therefore violates the Florida Constitution and is invalid.

188. Plaintiff and its members face a likelihood of irreparable harm if this Court does not grant the relief sought and allows the Vacation Rental Ordinance to be enforced notwithstanding its conflict with state law and the Vacation Rental Ordinance's invalidity.

189. Plaintiff and its members have no adequate remedy at law to address the harm described in this Complaint, as their injuries cannot be adequately remedied through money damages against Defendants.

190. The public interest strongly favors the entry of a permanent injunction and the resolution of this dispute to prevent the enforcement of an invalid vacation rental registration program.

Count 9: Quo Warranto

191. The allegations in paragraphs 1 through 78 are incorporated by reference.

192. This is a claim for a writ of quo warranto to determine that the City has improperly exercised its powers derived from the State of Florida by adopting the Vacation Rental Ordinance.

193. The City of Marco Island lacks the authority to enact City ordinances inconsistent with general law. § 166.021(1), Fla. Stat.; *id.* § 166.041, Fla. Stat.

194. Chapter 162 of the Florida Statutes contains general laws that limit the authority of local governments, such as the City of Marco Island, to enact ordinances that impose fines exceeding $250 (first offense) and $500 (repeat offenses), requires the property owner to first receive a notice of alleged violation or opportunity to cure the problem prior to the imposition of fines, and does not authorize the suspension of property owners' rights to rent their properties as a penalty for violating City ordinances.

195. The City of Marco Island exceeded its authority derived from the State of Florida by adopting the Vacation Rental Ordinance, because it imposes fines egregiously in excess of those authorized by chapter 163, imposes fines without first giving the property owner a notice of alleged violation or opportunity to cure the problem, and allows for the suspension of property owners' rights to rent their properties. (Exh. H).

196. In addition, section 509.032(7) preempts all local governments from regulating public lodging establishments and bans local governments from prohibiting vacation rentals or from regulating the duration or frequency of those rentals.

197. The City of Marco Island exceeded its authority derived from the State of Florida by adopting the Vacation Rental Ordinance, as the ordinance defines single-family homes within the RSF zoning area as Public Lodging Establishments and then regulates them. The Vacation Rental Ordinance also has the effect of prohibiting vacation rentals because it dramatically restricts vacation rentals, threatens property owners with severe penalties and punishments without warning or opportunity for correction, provides for the suspension of property owners' rights to operate vacation rentals, and forces property owners of single-family homes in certain neighborhoods to bear bureaucratic burdens and guidelines that are not borne by other property owners or renters in Marco Island. (Exh. H).

198. The City of Marco Island's failure to act in strict accordance with the requirements of Florida law makes it appropriate for this Court to issue a writ of quo warranto.

199. The requested writ of quo warranto is also consistent with the public interest in ensuring that local governments comply with laws adopted by the Florida Legislature limiting the circumstances under which they can adopt local ordinances

RELIEF SOUGHT

Wherefore, Plaintiff requests that this Court:

a. Enter a declaratory judgment that the Vacation Rental Ordinance is preempted to the state pursuant to section 509.032(7) of the Florida Statutes because the Vacation Rental Ordinance in effect is a prohibition on vacation rentals and/or regulates the duration and frequency of the rental;

b. Enter a declaratory judgment that the Vacation Rental conflicts with chapter 162, Florida Statutes because the Vacation Rental Ordinance fails to provide a property owner with notice or opportunity to cue any alleged violations prior to the imposition of penalties, imposes fines far in excess of those authorized by statute, and authorizes the suspension of a property owner's right to use his or her property as a vacation rental;

c. Enter a declaratory judgment that the Vacation Rental Ordinance violates Floridians' Equal Protection rights under the Florida Constitution because it treats property owners of vacation rentals in RSF zoning districts differently than property owners within RSF zoning districts who live in their homes and differently than property owners of vacation rentals in other zoning districts and has no rational reason or basis for treating these property owners differently

d. Enter a declaratory judgment that the Vacation Rental Ordinance violates Floridians' Free Speech and Due Process rights under the Florida Constitution because the noise regulations are both unconstitutionally vague and overly broad;

e. Issue a permanent injunction requiring Defendant the City of Marco Island to refrain from enforcing the Vacation Rental Ordinance;

f. Issue a writ of quo warranto determining that the City of Marco Island has exceeded its authority derived from the State of Florida by adopting the Vacation Rental Ordinance and that the Ordinance is therefore facially invalid;

g. Grant such other or further relief the Court deems appropriate, including but not limited to costs pursuant to chapter 57, Florida Statutes.

Respectfully submitted,

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EXHIBIT “A”

ORDINANCE NO. 22-XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA, ADDING TO THE LAND DEVELOPMENT CODE OF THE CODE OF ORDINANCES, IN ARTICLE II, ZONING, SECTION 30-90, CREATING A SELF-FINANCED, TRANSIENT SINGLE-FAMILY HOME (RSF) RENTAL REGISTRATION PROGRAM;, CREATING DEFINED TERMS; CONDITIONS REQUIRING TRANSIENT, SINGLE-FAMILY HOME RENTAL REGISTRATION AND APPLICATION REQUIREMENTS; CREATING TRANSIENT RENTAL REGISTRATION PROCESS; DEFINING THE QUALIFICATION OF AND REQUIREMENTS FOR A RESPONSIBLE PARTY; TRANSIENT RENTAL STANDARDS/RULES AND INSPECTIONS; THE PROCESS FOR RENEWAL OF REGISTRATION AND PENALTIES RESULTING IN FINES AND/OR THE SUSPENSION OF THE CERTIFICATE OF RENTAL COMPLIANCE; AND PROVIDING FOR SEVERABILITY,; PROVIDING A CONFLICTS CLAUSE, SEVERABILITY CLAUSE, AUTHORITY TO CODIFY, AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City of Marco Island's Land Development Code needs to be updated and revised to "Create a Rental Registration Program for RSF Zoned properties; and

WHEREAS, the City Council of the City of Marco Island, Florida, finds the enclosed ordinance is consistent with the latest version of the Marco Island Comprehensive Plan.

WHEREAS, the City Council of the City of Marco Island has determined that the proposed revisions to the Land Development Code are in the best interests of the general welfare of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF Marco Island, FLORIDA, that:

Section 1. The above recitals are true and correct and are hereby incorporated into this Ordinance as if fully restated herein.

Section 2. Section 30-90, of the Land Development Code of the Code of Ordinances of the City of Marco Island, Florida, shall be created and titled Rental Registration Program, and shall hereby include the following:

Section 30-90

1. Definitions

Certificate of Transient Rental Compliance means the document that is issued by the City that bears the words "Transient Rental Certificate of Compliance" and evidences that the person or

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entity, in whose name the document is issued, has complied with the provisions of this article relating to transient rentals.

Garbage (included as Litter) as defined in Section 18-32 of the Marco Island Code of Ordinances.

Residential property as defined in Chapter 30, Division 2 of the Marco Island Code of Ordinances

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 the property and the conduct and acts of occupants of residential properties. The Responsible Party shall be able to physically respond to the property within 1 (one) hour after notification.

Sleeping Room shall mean a room or space within a dwelling unit, primarily designed and used or intended to be used for sleeping purposes, excluding living rooms, family rooms, kitchens, bathrooms, shower rooms, water closet compartments, laundries, pantries, foyers, connecting corridors, closets and storage space. A couch/sofa and/or pull-out couch/sofa can be used for occupants 13 years and under, as cited in 30.90.8.b.1.c.

Transient Occupants means any person, or guest or invitee of such person, who occupies or is in actual or apparent control or possession of residential property for a period of less than 30 days, registered as required pursuant to this Article to be registered as, a Transient 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 Transient Rental is a Transient Occupant.

Vacation Rental/Transient Rental shall mean any individually or collectively owned RSF zoned single-family home, irrespective of the number of bedrooms, that is rented to Transient Occupants more than three (3) times in a calendar year for periods of less than thirty (30) days, or which is advertised or held out to the public as a place regularly rented to Transient Occupants.

2. Registration Required

(a) It is unlawful for any person to allow another person to occupy any residential property that is a single-family, RSF zoned, house or dwelling unit as a Transient Rental within the City of Marco Island, or offer such property for rent as a Transient Rental within the City of Marco Island, unless the person has registered the property as a Transient Rental property with the City of Marco Island, or Designee, and the Transient Rental property has been issued a Certificate of Transient Rental Compliance in accordance with the provisions of this Article.

(b) An application for registration as a Transient Rental is deemed pending when the application has been filed, all applicable fees have been paid to the City pursuant to Section 30-90.3,

Code of Ordinances of the City of Marco Island, Florida, a Certificate of Transient Rental Compliance has not been issued for the property and the application has not been rejected. A registration application rejected as incomplete is not pending. Notwithstanding subsection (a) above, a person may allow another person to occupy a residential property, for which a Certificate of Transient Rental Compliance has not been issued, as a Transient Rental, when an application is pending if:

(1) The residential property has an effective and valid license as a Transient Rental classification of public lodging establishment issued by the Florida Department of Business and Professional Regulations prior to November 1. 2022; and

(2) The residential property is not in violation of any section of the Code of Ordinances of the City of Marco Island; and

(3) An application for registration of the residential property as a Transient Rental has been filed pursuant to Section 30-90.3 and all applicable fees have been paid; and

(4) That said occupancy of the Transient Rental was scheduled prior to August 15, 2022, as evidenced by a written and validly executed rental agreement or contract provided to the City Manager, or his/her Designee, no later than November 15, 2022.

(5) The residential property has no fines or liens, payable to the City of Marco Island, outstanding at the time of Application.

(6) Transient Rental shall be registered annually on or before the thirtieth (30th) day of September.

3. Application for Transient Rental Registration

(a) A separate application for registration of a Transient Rental shall be made to the City Manager or his/her designee for each dwelling unit, as the term is defined in Section 30-90.1 of the City of Marco Island, Florida, Land Development Code, proposed for use as a Transient Rental and 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, electronic mail address, and phone number of owner of said property; Name, address, electronic mail address, and emergency contact phone number of Responsible Party for said property, which shall be a twenty-four (24) hour, seven (7) days a week contact phone number.

(3) That the phone number for the Responsible party will be answered twenty-four

(24) hours a day, seven (7) days a week by the Responsible Party.

(4) Acknowledgements by owner of the following:

a. That all overnight vehicles associated with the Transient Rental must be parked within a driveway located on the subject property and said driveway is constructed in compliance with the Code of Ordinances of the City of Marco Island.

b. That it shall be unlawful to allow or make any noise or sound that exceeds the limits set forth in Section 30-90.9, Transient Rental Noise Control.

c. That the owner shall comply with all applicable City, County, State and Federal laws, rules, Regulations, Ordinances and Statutes.

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 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.

f. That other properties are not jointly shared commodities and should not be considered available for use by transient occupants of the property subject of the application; and

(5) Proof of owner's current ownership of the property.

(6) Proof of registration with the Florida Department of Revenue for sales tax collection (for Collier County Sales Tax); and

(7) Proof of licensure with the Florida Department of Business and Professional Regulation for a transient public lodging establishment.

(9) Minimum Insurance Requirements: Every short-term rental property licensed pursuant to this Section shall continuously maintain liability insurance appropriate to cover the short-term rental use, including any necessary policy endorsements, with a minimum of at least $1 million or solely conduct each short-term rental transaction through a platform that provides equal or greater liability insurance coverage to cover the short-term rental use. Evidence of Insurance: Every applicant shall tender to the City of Marco Island, or Designee, the certificates of insurance certifying that insurance of the

types and in the amounts required by this chapter are in full force and effect at all times; and

(8) Proof of compliance with Subsection 30-90.8

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

b. An application for the modification of a Transient Rental registration is required when any of the following changes to the Transient Rental are proposed:

(1) A change in the gross square footage.

(2) A change in the number of bedrooms.

(3) A change in the maximum occupancy.

(4) A change in the number of parking spaces, or a change in the location of parking spaces.

Upon completion of the changes or alterations to the Transient Rental property or the Transient Rental operation the owner shall notify the City, or Designee, within ten (10) days of completion. A new certificate of compliance may be issued if the conditions of Section 30-90.3.a have been met and all required permits have been issued for the changes or alterations.

4. Fee and Costs for Registration

(a) The City of Marco Island shall charge a fee for Rental Registration. The Marco Island City Council, upon adoption of this Ordinance, will determine the amount of the Fee, per year, together with a consideration as to whether this fee is refundable or nonrefundable. The Marco Island City Council shall determine the funding method for the Registration Program. It should be noted that the State of Florida is considering a maximum Registration Fee of $50 (fifty dollars) per year for all Rental Registrations.

1. In addition to the yearly Registration Fee, every Applicant of a Rental Compliance Certificate shall be assessed a non-refundable Program Cost Administration Fee. This Fee is subject to yearly adjustment and will be calculated as the total cost of the Program, including Administrative and Enforcement costs, divided by the number of Transient Rental Homes. This Fee will include the cost of the yearly Fire Inspection fee. Each Fiscal year, the City Manager, Director of Finance and any other Designated Personnel, will determine the new Program Cost Administration Fee that will be adjusted to reflect any shortage or overage for the new Fiscal year. It is the intention of the Program to be administered to not generate a profit or loss for the Program. The Marco Island City Council shall determine all funding aspects of the Program, in coordination with the Director of Finance.

2. The first year Program Cost Administration Fee, shall be determined by the Marco Island City Council, and shall be assessed on per Transient Rental Home basis.

(b) No Registration can be completed if a home has outstanding fees, fines or liens owed to the City of Marco Island for any reason(s). Proof of payment of any outstanding fees, fines or liens shall be submitted prior to the issuance of any Certificate of Transient Rental Compliance.

5. Responsible party required.

Whenever any property is required to be registered under this Article, the owner shall appoint a natural person 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 of notice to the owner. An initial Responsible Party shall be designated, and name submitted with the application for registration, and the City Manager or his/her designee shall thereafter be notified of any change of Responsible Party within ten (10) days of such change. Further, it is the affirmative duty of the Responsible Party to:

(a) Provide all guests prior to occupancy of the property with a written summary, printed in the English and Spanish language, of applicable City of Marco Island Ordinances concerning noise, vehicle parking, garbage, and common area usage. The summary shall include citations to the applicable City of Marco Island Ordinances and instructions on how to access the complete written text. The summary shall be posted in the interior of the structure, prominently near the main entrance of the establishment.

(b) Maintain all properties under their control in compliance with the Code of Ordinances of the City of Marco Island, Florida.

(c) 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.

(d) Be available with authority to address and coordinate solutions to problems with the rental of the property twenty-four (24) hours a day, seven (7) days a week.

(e) Be situated close enough to the property as to be able to respond in person within one (1) hour of being notified by a Transient Rental occupant, law enforcement officer, a City Manager designated Rental Compliance Officer/employee, emergency personnel, or the City, of issues related to the Transient Rental. Responsible party shall respond when requested.

(f) Keep available a register of all current guests, only, which shall be available for inspection by authorized personnel of the City of Marco Island at all times.

(g) Maintain, or arrange for the maintenance, of the entire property free of garbage and litter, provided however, that this subsection shall not prohibit the storage of garbage and litter in authorized receptacles for collection.

(h) Conduct an on-site inspection of the Transient Rental at the end of each rental period to assure continued compliance with the requirements of this chapter.

6. 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. Transient 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.

7. Minimum Requirements for Issuance of a Certificate of Compliance.

The City Manager or his/her designee may issue a Certificate of Compliance to the applicant upon proof of the following:

(a) The owner or Responsible party completes the City of Marco Island Transient Rental registration application form.

(b) The non-refundable Transient Rental registration fee has been paid to the City of Marco Island.

(c) A signed and Notarized Responsible Party Authorization Letter (sample provided with Transient Rental Application Form). The Letter will be signed by both the Owner and Responsible Party and both signatures will be Notarized.

(d) A Florida Department of Revenue certificate of registration for purposes of collecting and remitting tourist development taxes, sales surtaxes and/or transient rental taxes.

(e) A Florida Department of Business and Professional Regulation license as a transient public lodging establishment.

(f) An affidavit, demonstrating maintaining initial and on-going compliance with Transient 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

(g) A copy of the form Transient rental/lease agreement to be used when contracting with Transient Occupants and guests.

(h) That the Transient Rental has satisfied the inspection requirements, annually, as provided in Section 30-90.8, of the Code of Ordinances of the City of Marco Island.

(i) Submission of the insurance document(s) referenced in Section 30.90.3.a.9.

(j) That the Transient rental is not subject to a suspension pursuant to Section 30-90.11.

8. Transient Rental Standards.

The following standards shall govern the use of any transient rental as a permitted use:

(a) Minimum life/safety requirements:

1. Swimming pool, spa and hot tub safety. A swimming pool, spa or hot tub shall comply with the current standards of the Residential Swimming Pool Safety Act, Chapter 515, Florida Statutes.

2. Dwelling Units. All dwelling units shall meet the single-family dwelling minimum requirements of Article VI. Minimum Housing Code, Chapter 9, Buildings and Construction of the Code of Ordinances of the City of Marco Island, Florida.

3. Smoke and carbon monoxide (CO) detection and notification system. A smoke and carbon monoxide (CO) detection and notification system within the transient rental unit shall be installed, operational and interconnected/hard-wired and receive primary power from the building wiring. The smoke and carbon monoxide (CO) detection and notification system will be continually maintained and tested consistent with the requirements of Section R314, Smoke Alarms, and Section R315, Carbon Monoxide Alarms, of the Florida Building Code – Residential.

4. 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 location.

5. That all overnight vehicles associated with the Transient Rental must be parked within a garage and/or on a driveway located on the subject property and in compliance with the Code of Ordinances of the City of Marco Island.

6. Local phone service. At least one landline telephone with the ability to call 911 shall be available in the main level common area in the Transient Rental.

7. Included in the yearly Registration Fee described in Section 30-90.4 is the cost of a Marco Island Fire Dept. Fire Safety inspection. This inspection, and any required corrections/modifications must be completed prior to the issuance of a Transient Rental Certificate of Compliance.

8. Also required on a yearly basis, is a safety inspection by a City of Marco Island Designated/Authorized Inspector. This inspection, and any required corrections/modifications must be completed prior to the issuance of a Transient Rental Certificate of Compliance.

(b) Maximum occupancy. The occupancy of a Transient Rental shall not exceed÷

1. Two (2) persons per Sleeping (Bedroom) Room. The number of Bedrooms is reflected in the records of the Collier County Property Appraiser's Office (via cross-referencing Building Permit look-up) and shall be used in determining the number of Sleeping Rooms at the Transient rental.

a. The maximum number of persons allowed to gather at a Transient Rental shall not exceed one and one-half times the maximum ADULT occupants authorized to stay overnight at that site, as shown on the Certificate of Compliance, and in no event shall a gathering exceed 20 persons. After 10 pm, the number of occupants shall not exceed the maximum occupancy described in (b)1, above plus a maximum of 4 persons under the age of 13 years.

This subsection a. shall not apply to owner-occupied Transient Rentals when the property owner is physically present on the site during the gathering.

b. Up to four (4) persons under 13 years of age are exempt from and shall not count towards the occupancy limits set in subsections a. and b. above.

(c) Solid waste handling and containment. City solid waste containers shall be provided as required. Appropriate screening and storage requirements for solid waste containers shall apply per any development approval. 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.

(d) Minimum transient rental/lease agreement wording. The transient rental/lease agreement shall contain the minimum information as provided for in this subsection 30-90.8

(e) Minimum transient rental lessee information. The transient rental lessee shall be provided with a summary of the information required in subsection 30-90.8 with instructions on how to access the full text and shall post the following conspicuously within the establishment:

1. A statement advising the Occupant that any sound shall not be plainly audible for a period of one (1) minute or longer at a distance of twenty-five (25) feet or more when measured from the source property line between the hours of 10:00 p.m. and 7:00 a.m. daily and at a distance of fifty (50) feet or more when measured from the source property line between the hours of 7:00 a.m. and 10:00 p.m. daily.

2. A sketch or photograph of the location of the off-street parking spaces.

3. The days and times of trash pickup.

4. The notice of sea turtle nesting season and sea turtle lighting regulations, if applicable.

5. The location of the nearest hospital; and

6. The City's non-emergency police phone number.

7. There shall be posted, next to the interior door of each bedroom a legible copy of the building evacuation map – Minimum 8-1/2" by 11".

(f) Designation of a transient rental responsible party capable of meeting the duties provided in subsection 30-90.5.

(g) Advertising. Any advertising of the transient rental unit shall conform to information included in the Transient Rental Certificate of Compliance and the property's approval, particularly as this pertains to maximum occupancy. A statement stating "it is unlawful for a sexual offender or sexual predator to occupy this residence" if so determined pursuant to subsection 30-90.8.h of this code and the Certificate of Compliance number shall be included in all advertising.

(h) Sexual offenders and sexual predators. It is unlawful for any property owner or designated representative to allow another person to occupy any residential property as a Transient Rental within the City of Marco Island, as a Transient Occupant if such property owner or designated representative knew 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 the Marco Island Code of Ordinances, Section 18-200, if such place, structure, or part thereof, trailer or other conveyance, is located within one thousand four hundred (1,400) feet of any school, designated public school bus stop, child day care facility, park or playground or other place where children regularly congregate. Property owner or designated representative shall determine prior to submission of an application for a Certificate of Compliance whether the Transient Rental property is located in an area unlawful sexual offenders or sexual predators to occupy pursuant to section 18-200 of the Marco Island Code of Ordinances.

(c) Posting of Certificate of Compliance. The Certificate of Compliance shall be posted on the back of or next to the interior of the main entrance door and shall include at a minimum the name, address and phone number of the Responsible party, the maximum occupancy of the Transient Rental and a statement stating "it is unlawful for a sexual offender or sexual predator to occupy this residence" if so determined pursuant to subsection 30-90.8.h.

(d) That all overnight vehicles associated with the Transient Rental must be parked within a garage or on the subject Transient Rental driveway in compliance with the Code of Ordinances of the City of Marco Island.

(e) Other standards. Any other standards contained with the Code of Ordinances of the City of Marco Island to include, but not be limited to: Transient Rental noise, setbacks, stormwater and similar provisions.

(f) As a general policy, tenants and their guests are required to adhere to a "good neighbor" Code of Conduct Policy by which they will be respectful of their neighbors and not disrupt the peace and tranquility of their neighbors; not make raucous, loud, or unnecessary noise at any time; not allow drunken, disorderly, or intoxicated conduct on the short-term rental dwelling property; and not violate parking or occupancy restrictions. The owner shall provide a copy of the Code of Conduct "good neighbor" Policy to all tenants at the commencement of rental occupancy of a dwelling

9. Transient Rental Noise Control

Notwithstanding existing Noise Regulations contained in Article IV, Section 18, of the Marco Island Code of Ordinances, the use of a RSF property as a Transient Rental is a "public lodging" use of a home in a residential neighborhood. As such, a much stricter/quieter set of noise parameters must be defined for this application. For any RSF property being used as a Transient Rental, the Noise Regulations shall be defined as:

Any sound shall not be plainly audible for a period of one (1) minute or longer at a distance of twenty-five (25) feet or more when measured from the source property line between the hours

of 10:00 p.m. and 7:00 a.m. daily and at a distance of fifty (50) feet or more when measured from the source property line between the hours of 7:00 a.m. and 10:00 p.m., daily."

For all other Noise applications, Article IV of the Marco Island Code of Ordinances shall apply.

10. Expiration of Registration and Certificates of Compliance

(a) All registrations for which a certificate of compliance has been issued under the provisions of this Article shall be valid for no more than one year, and all registrations and certificates of compliance shall expire on September 30th of each year. The application for renewal must be submitted no later than sixty (60) days prior to the September 30th expiration date. Dates for renewal and applicable late renewal fees shall be established by resolution of the City Council of the City of Marco Island, or Designee, in accordance with Section 30-90.4.a.1 and shall be charged to an application for renewal submitted prior to the expiration date but after the sixty (60) days required by this section. All applications for renewal received after September 30 shall be processed as a new application and subject to all applicable fees.

11. Revocation, Penalties, Offenses, and Revocation

(a) Any Certificate of Rental Compliance issued pursuant to this Article may be denied, revoked, or suspended by the City Manager or his/her designee upon the adjudication of a violation of this Article, any City of Marco Island Ordinance, or State law by the Responsible party, property owner or Transient Occupant attributable to the property for which the Certificate of Compliance is issued. Such denial, revocation or suspension is in addition to any penalty provided herein.

(b) Offenses/violations.

(1) Non-compliance with any provisions of this Article shall constitute a violation of this Article.

(2) Separate violations. Each day a violation exists shall constitute a separate and distinct violation, except that occupancy violations of subsection 30-90.8.b. regarding occupancy and parking violations of subsection 30-90.3.a.5.a regarding parking shall constitute a single violation for a rental period.

(c) Remedies/enforcement.

(1) 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 transient rental program it is key that transient rental Responsible Parties are responsive and responsible in the management of the property for compliance with this section.

Any person, persons, STR owner, guilty of violating any of the provisions of this article shall be deemed guilty of a civil infraction. The amount of the civil penalty for the first uncontested violation shall be $200.00 and for the first contested violation the penalty shall be $275.00. Second violations shall be assessed $500.00 for an uncontested violation and $650.00 for a contested violation. Third violations shall be assessed $1000.00 for an uncontested violation and $1300.00 for a contested violation. These amounts are fixed fines, not subject to reduction by a Magistrate.

(2) Additional remedies. Nothing contained herein shall prevent the City of Marco Island from seeking all other available remedies which may include, but not be limited to, suspension or revocation of a Transient Rental Certificate of Compliance, injunctive relief, liens and other civil and criminal penalties as provided by law, as well as referral to other enforcing agencies.

(d) Suspension of Transient Rental Certificate of Compliance. In addition to any fines and any other remedies described herein or provided for by law, a special magistrate shall suspend a Transient Rental Certificate of Compliance in accordance with the following:

(1) Suspension time frames.

a. Upon a fourth violation of this Article the Transient Rental Certificate shall be suspended for a period of one hundred eighty (180) calendar days.

b. Upon a fifth violation of this Article the Transient Rental Certificate shall be suspended for a period of three hundred sixty-five (365) calendar days.

c. For each additional violation of this Article the Transient Rental Certificate shall be suspended for an additional thirty (30) calendar days up to a maximum period of twelve (12) months. For example, the sixth violation shall be for three hundred ninety-five (395) calendar days; the seventh violation shall be for four hundred fifteen (415) calendar days, and so on.

d A Transient Rental Certificate of Compliance shall be subject to temporary suspension beginning five (5) working days after a citation is issued for a violation of the Florida Building Code, or Florida Fire Prevention Code. Such suspension shall remain in place until the transient rental is reinspected and it is determined that the violation no longer exists by the City, in accordance with d.2, below.

(2) Suspension restrictions. A transient rental may not provide transient or long term rental occupancy during any period of suspension of a Transient Rental certificate.

a. The suspension shall begin immediately following notice, commencing either;

i. at the end of the current transient rental lease period; or

ii. within thirty (30) calendar days, whichever date commences earlier, or as otherwise determined by the Magistrate.

b. Operation during any period of suspension shall be deemed a violation pursuant to this article and shall be subject to daily fine, up to One thousand dollars ($1,000.00) or to the maximum amount as otherwise provided in Florida Statutes for repeat violations, for each day that the transient rental operates during a period of suspension.

c. An application for a renewal may be submitted during the period of suspension: however, no Certificate of Compliance may be issued for the transient rental until the period of suspension has expired.

d. A Transient Rental Certificate of Compliance cannot be reinstated from suspension if any fines, liens, fees are outstanding and due to the City of Marco Island.

e. In accordance with Section 30-90.2.a, any Transient Rental property where the Transient Rental Certificate of Compliance has been suspended, is not legally eligible to be advertised as a rental property. The City of Marco Island, or Designee, will notify agencies such as Airbnb, Craigs List and VRBO and local newspapers with regard to any suspensions (addresses and Certificate numbers). As a matter of information only, these agencies have agreed to not advertise properties that have suspended Certificates and/or are not legal rentals.

12. Complaints.

Whenever a violation of this Article occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof, shall be filed with the City Manager or his/her designee. The City Manager or his/her designee shall promptly record such complaint, investigate, and take action thereon in accordance with this article.

a. A Violation and/or complaint may also be filed by telephone directly to the City of Marco Island, or Designee, Rental Hotline. This number will be published, when operational, on the City website and via local newspapers. Operation of the Hotline will be determined by the City Manager and/or his or her Designee..

13. Enforcement

The provisions of this Article shall be enforced as provided in Section 14 - Code Enforcement, of the Code of Ordinances of the City of Marco Island, Florida.

14. Rental Registration Program Administration

The Marco Island City Council shall be responsible for the implementation and funding for the Program described in this Ordinance.

15. Rental Registration Program Subordination

Upon any determination that Short Term Rentals are illegal on Marco Island, this Ordinance shall not apply for any such illegal rental(s) and the illegal rental(s) shall cease to operate in accordance with the provisions herein.

However, in the event that any other rental in the RSF district that is not deemed illegal and that is defined by Florida State Statutes as a "Public Lodging Establishment" or any transient rental that is not a primary or principal residence of the renting party, any such rental shall be governed and regulated by this Ordinance.

In the event that the City of Marco Island determines that Short Term Transient Rentals are not allowed in RSF zoning, no new Transient Rental Compliance Certificates will be issued, and the Rental Registration Program will be discontinued as of 30 September of the year such rental ban is determined. Transient Rentals will be allowed, in accordance with Section 30-90 of the Marco Island Code of Ordinances until 30 September of the year of the Short Term Rental ban.

Section 3. All ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 4. This Ordinance shall become effective immediately upon its passage on second and final reading of the Marco Island City Council.

Section 5. The Ballot Title of this Ordinance is "Rental Registration Program for RSF Properties in the City of Marco Island"

Section 6. In accordance with Florida Statute 106.161(1), the Ballot Summary (for Ballot use only) is provided for the subject Ordinance as "Shall the City of Marco Island enact an Ordinance adding to the Land Development Code of the Code of Ordinances, in Article II, Zoning, Section 30-90, creating a self-financed Transient (Vacation) RSF Rental Registration Program; creating definitions; conditions requiring registration and application requirements; defining requirements and qualification for Responsible Party; rental standards and inspections; renewal process; violation penalties including fines and/or the suspension of Registration Compliance Certificate"

Yes ( )

NO ( )

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PASSED AND ADOPTED in regular session on second and final reading on this _____ day of 2022.

ATTEST:

City Clerk _____

First Reading_____

Second Reading_____

Approved as to form and legal sufficiency: _____

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EXHIBIT “B”

WEISS SEROTA
HELFMAN COLE + BIERMAN

ALAN L. GABRIEL
PARTNER
AGABRIEL@WSH-LAW.COM

March 31, 2022

VIA U.S. Mail and E-Mail (edissler@comcast.net)
Mr. Edgar Issler
P.O. Box 1310
Marco Island, FL 34146

RE: Form and Technical Sufficiency of a Proposed Sixth Revised Petition for Ordinance to Implement a Vacation Rental Registration Program for Marco Island

Dear Mr. Issler:

This law firm serves as the City Attorney for the City of Marco Island (the "City"). On February 2, 2022, the City Clerk received your affidavit for a committee in support of a Marco Island Referendum Petition for implementation of a Rental Registration Program for properties located in RSF zoning (the "Committee"). On March 24, 2022, the City received a proposed sixth revised initiative petition to be circulated by the Committee calling for the adoption of an ordinance to implement a vacation rental registration program for Marco Island (the "Sixth Revised Petition"). In accordance with Section 6.03 of the City Charter (the "Charter"), I have been asked to review the Petition for form and technical sufficiency.

Section 6.01 of the Charter provides that qualified electors of the City shall have the power to petition the Council to propose an ordinance, provided that "such power shall not extend to the budget or capital program or to any ordinances relating to appropriations of money, levy of taxes, or salaries of City officers or employees." Section 6.02 of the Charter sets forth certain form requirements for a petition.

Section 6.03 of the Charter requires that the format and content of the Petition conform to the requirements of general law for amending municipal charters, the general election laws, and the administrative rules for initiative petitions. The 2022 Initiative Petition Handbook and Section 1S-2.009 of the Florida Administrative Code ("FAC") sets forth specific form requirements for a petition. Section 101.161, Florida Statutes, enumerates the technical requirements for a public measure placed on a ballot and mandates that where a public measure is submitted to the vote of the people, the ballot title and summary to appear on the ballot shall be embodied in the enabling ordinance.

The Sixth Revised Petition is consistent with the requirements set forth above. Accordingly, the Sixth Revised Petition is technically sufficient. As the Ordinance has been submitted as an

attachment to the Sixth Revised Petition, we must refrain from commenting on the legal sufficiency of the Ordinance, including the substance of the Ordinance and explanatory statement/ballot question. As such, the City may advise the Committee to seek the opinion of the Collier County Supervisor of Elections regarding the legal sufficiency of the substance of the explanatory statement included in the Ordinance.

Very truly yours,

Alan L. Gabriel

EXHIBIT “C”

WEISS SEROTA
HELFMAN COLE + BIERMAN

MEMORANDUM

To: City Council, Marco Island, Florida

From: Alan L. Gabriel, City Attorney

Re: Vacation Rental Registration Initiative Petition – Next Steps

Date: May 18, 2022

On February 2, 2022, the City Clerk received an affidavit for a committee in support of a Marco Island Referendum Petition for implementation of a Rental Registration Program for properties located in RSF zoning (the "Committee"). On March 24, 2022, the City received a proposed sixth revised initiative petition to be circulated by the Committee calling for the adoption of an ordinance to implement a vacation rental registration program for Marco Island (the "Ordinance").

On May 17, 2022, the Collier County Supervisor of Elections certified that sufficient registered voters had been obtained to place the initiative question relative to amending the Marco Island City Code to implement a vacation rental registration program to the electors on the August 23, 2022 primary general election. A copy of the Supervisor of Elections certification is attached hereto.

Pursuant to the City of Marco Island Charter, below is an outline of the next steps.

- Within 20 business days after certification of the registered voters is received from the Supervisor of Elections, the City Manager, or other official designated by the Council, shall complete a certificate as to the petition's sufficiency.[1]
- Once the certification of valid City electors is received, Council shall take appropriate action addressing the sufficiency of the petition pursuant to Section 166.031, Florida Statutes.[2]

[1] Section 6.03(2) of the City Charter.
[2] Section 6.05(1) of the City Charter.

- If Council fails to adopt the Ordinance as proposed, without any change in substance, the Council **shall** place the Ordinance on the ballot of the next general election, or in Council's discretion, at a special election.[3]
- If the petition is sufficient, Council **shall** schedule the item for an election. The Council, in its discretion, may schedule the matter at either the next City election or a special election.[4]
    - If Council decides a special election is to be held, it **shall be** conducted by mail ballot not less than 90 days from the date of Council's determination of the need for a special election if there is no intervening City, County, state, or federal election on which the Ordinance can be placed.[5]
- If a majority of the qualified electors voting on the proposed Ordinance vote in favor of the Ordinance, the Ordinance shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the Council.[6]

An initiative petition may be withdrawn at any time prior to the 40th day preceding the day scheduled for a vote of the City by filing with the City Manager or other official designated by the Council a request for withdrawal signed by at least four members of the Committee.[7] By my calculation, the 40th day is July 14, 2022.

During my review of the Ordinance, a few issues with the language in the Ordinance were brought to my attention. Those issues relate to inconsistencies with Section 509.032, Florida Statutes and Chapter 162, Florida Statutes. It is my intention to provide Council with a separate memorandum that will address these inconsistencies shortly.

Now that the City has received the Supervisor of Elections Certification, below are Council's options:

1. Adopt own ordinance, and the Committee can then choose to withdraw their petition.
2. Present own revised ordinance on the ballot for voters. However, ballot questions must be submitted to the Supervisor of Election by June 17, 2022.
3. Leave the Ordinance as is, and then amend the Ordinance if/when adopted.
4. File a declaratory action to invalidate the petition.

[3] Section 6.01(1) of the City Charter.
[4] Section 6.05(1) of the City Charter.
[5] Section 6.05(2) of the City Charter.
[6] Section 6.06(1) of the City Charter.
[7] Section 6.05(3) of the City Charter.

If you have any questions, or would like to discuss this matter further, please do not hesitate to contact me.

Attachment
cc: City Manager
City Clerk

Jennifer J. Edwards
Supervisor of Elections
Collier County, Florida

May 17, 2022

Marco Island Charter Amendment Petition Certification

This is to certify that 'Take Back Marco PAC' has submitted the required 1333 valid petitions for "Implement a Single-Family Home Transient Rental Registration Program including rules, inspections, penalties, and suspensions" to meet the requirement for ballot position based on the book closing total of 13,332 registered voters for the 2020 General Election

Attested to on this date,

David B. Carpenter
Filing Officer
Collier County Supervisor of Elections

EXHIBIT “D”

WEISS SEROTA
HELFMAN COLE + BIERMAN

MEMORANDUM

To: City Council, Marco Island, Florida

From: Alan L. Gabriel, City Attorney

Re: Vacation Rental Registration Ordinance

Date: May 26, 2022

Background

As previously discussed, on February 2, 2022, the City Clerk received an affidavit for a committee in support of a Marco Island Referendum Petition for implementation of a Rental Registration Program for properties located in RSF zoning (the "Committee"). On March 24, 2022, the City received a proposed sixth revised initiative petition to be circulated by the Committee calling for the adoption of an ordinance to implement a vacation rental registration program for Marco Island (the "Ordinance").

On May 17, 2022, the Collier County Supervisor of Elections certified that sufficient registered voters had been obtained to place the initiative question relative to amending the Marco Island City Code to implement a vacation rental registration program to the electors on the August 23, 2022 primary general election. On May 19, 2022, I provided you with an outline of the next steps and referenced that there were certain inconsistencies/issues with the proposed Ordinance. The Ordinance will be presented to City Council for consideration at the June 6, 2022 Council meeting.

The Ordinance As Proposed

Generally, although the Ordinance creates the vacation rental regulations within the RSF Districts Section of the Zoning Code, it is likely not the appropriate route to add a vacation rental registration program. Another alternative can be found under Chapter 30, Land Development Code, Article I, in General or Article II, Zoning, Division 1, Generally. Additionally, certain provisions of the Ordinance may be in violation of Section 509.032(7), Florida Statutes. Section 509.032(7) provides that a "local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals." Furthermore, portions of the Ordinance may

violate the Equal Protection Clause of the U.S. Constitution by treating vacation rentals in RSF zoning differently than vacation rentals in other zoning districts and similarly situated single-family residences. There are also multiple instances in which the Ordinance cross-references or incorrectly cite City Code section and terms used are not defined or consistent throughout the Ordinance.

Below is an outline of areas of concern in the Ordinance broken down in order of the Ordinance subsections. A copy of the Ordinance is attached for ease of reference.

- Proposed Section 30-90(1), entitled Definitions

    1. **Line 52** - As drafted these regulations would not apply to any vacation rental activity outside RSF zoning. Although a large portion of the City's parcels authorized to be used for dwellings are zoned RSF, this Ordinance would not capture any vacation rental in RMF-6, Multi-Family dwellings; RMF-12, Multi-Family dwellings; RMF-16, Multi-Family dwellings; PUD; or RT zoning districts.

- Proposed Section 30-90(2), entitled Registration Required

    2. **Lines 70-88** – Items 1-6 may subject the Ordinance to legal challenge as in conflict with state law for prohibiting vacation rentals or for being arbitrary and unreasonable based upon whether a reasonable timeframe is afforded to comply with the Ordinance.

- Proposed Section 30-90(3), entitled Application for Transient Rental Registration

    3. **Lines 113-115** – This required acknowledgement is contrary with placement of waste at curb for the rest of the City under Marco Island Code of Ordinances Chapter 18, Article I, Section 18-36.

    4. **Lines 129-137** – "Minimum Insurance Requirements" may subject the Ordinance to legal challenge for requiring vacation rental operators to obtain a minimum of $1 million dollars in liability insurance coverage specific to the vacation rental use since other similarly situated properties within the City are not required by Ordinance to maintain minimum insurance requirements.

- Proposed Section 30-90(4), entitled Fee and Costs for Registration

    5. **Lines 163-171** –Currently, there is no requirement to obtain a fire inspection for a single family home. As such, this requirement may

be in violation of Section 509.032(7), Fla. Stat. Finally, subjecting all vacation rental owners and only those located in the RSF zoning district to the total cost of enforcement for all vacation rentals will subject the Ordinance to challenge.

- Proposed Section 30-90(6), entitled False Information

6. **Lines 213-214** - Any regulation which has the possible effect of prohibiting a vacation rental subjects the Ordinance to legal challenge for being in conflict with state law, such as "revocation of any license."

- Proposed Section 30-90(8), entitled Transient Rental Standards

7. **Lines 249-251** – Subsection (a)(2) citation does not exist under Marco Island Code of Ordinances.

8. **Lines 274-277** – There is no prescribed fire safety inspection fee for single family dwellings.

9. **Lines 289-298** – The curfew restriction may subject the Ordinance to legal challenge as in violation of Florida Statutes. Vacation rentals in Multiple Family Zoning Districts and Planned Unit Development Zoning Districts will not have the same occupancy.

10. **Line 297** – The age restriction could be subject the Ordinance to legal challenge.

11. **Lines 301-304** – Inconsistent with current code requirements

12. **Lines 306-308** – Subsection 8(d) requires certain information that must be included in the rental/lease agreement. This raises several concerns regarding a private person's right to contract that will need to be researched further if sufficient support for the amendment is achieved.

13. **Lines 313-317** – The noise regulation is more restrictive than current code requirements for other similarly situated single family dwellings whether in the RSF or other City zoning districts.

- Proposed Section 30-90(9), entitled Transient Rental Noise Control

14. **Lines 368-378** – Creating noise regulations that are more restrictive than regulations applicable to the rest of the City may subject the Ordinance to legal challenge as in violation of Florida Statutes and the First Amendment of the U.S. Constitution. Vacation rental uses in every other zoning district are subjected to a less stringent noise regulations, including multiple family dwellings, which in most cases will share a common wall with a neighboring property.

- Proposed Section 30-90(11), entitled Revocation, Penalties, Offenses

15. **Lines 409-415** – Subsection 11(c) creates a fine program that is inconsistent with both Chapter 162: Florida Statutes and Chapter 14 of Marco Island Code of Ordinances.

16. **Lines 424-461** – Any regulation which has the possible effect of prohibiting a vacation rental or regulating the frequency or duration of a vacation rental subjects the Ordinance to legal challenge for being in conflict with state law, such as "suspension time frames."
17. **Lines 440-441** – For the first time, the Ordinance prohibits "long term rental occupancy" during suspension. This is not defined or otherwise regulated in the Ordinance. Additionally, this may cause conflict with a person's private real property rights.

18. **Lines 460-461** – Subsection 11(d)(2)(e) states that Airbnb, Craig's List and VRBO "have agreed to not advertise properties that have a suspended Certificates." This would need to be fact checked or otherwise validated.

- Ordinance Section 12, entitled Complaints

19. **Line 498** – The incorrect Florida statute is cited. The Florida statute governing ballot summaries is Section 101.161(1).

This summary is not intended to be all inclusive. We have identified at least 19 areas of specific concern that have been readily found but are not intended to demonstrate the most problematic areas of the Ordinance. There may be additional issues with the Ordinance.

Council's Options

As a reminder, pursuant to the Charter, Council has the following options to address issues with the Ordinance:

1. Adopt own ordinance, and the Committee can then choose to withdraw their petition.

2. Present own revised ordinance on the ballot for voters. However, ballot questions must be submitted to the Supervisor of Election by June 17, 2022.

3. Leave the Ordinance as is, and then subsequently amend the Ordinance if/when adopted.

4. File a declaratory action to invalidate the petition, which would include the Ordinance.

If you have any questions, or would like to discuss this matter further, please do not hesitate to contact me.

Attachment – Proposed Initiative Ordinance

cc: City Manager
City Clerk

EXHIBIT “E”

CITY OF MARCO ISLAND

To: Marco Island City Council

Thru: Mike McNees, City Manager

From: Casey Lucius, Assistant to the City Manager
Alan L. Gabriel, City Attorney

Date: September 19, 2022

Re: Transient Rental Registration Ordinance

On August 23, 2022, the voters of Marco Island voted in favor of a referendum to implement a transient rental registration program in residential single family (RSF) districts. The Ordinance as presented to and approved by Marco registered voters is attached hereto as Exhibit "A".

Following the election, the Referendum Committee (Committee) that drafted the Ordinance voluntarily submitted their proposed edits to City staff. Those edits include the following:

- Added a definition of noise to exclude noises that are not specific to the occupancy of the property from the enhanced noise ordinance (p.2)
- Clarified that living rooms and family rooms can be used for sleeping if permanent sleeping furniture is provided, and removed "13-year old" language surrounding sofa beds. [permanent sleeping furniture is not defined and should be deleted] (p.2)
- Added a definition of residential property for clarity purposes (p.2)
- Modified the definition of vacation rentals/transient rentals to align with state statutes(p.2)
- Adjusted the time for garbage container removal to match current standards for all single family homes (p.4)
- Consolidated the two program fees into one fee (p.6)
- Made numerous technical corrections to more accurately cite state statutes and the Marco Island Code of Ordinances (p.9 and p.17)

- Added a provision to allow transient rental owners to evict tenants in certain instances, if the owner chooses [Any regulations related to eviction, or obtaining possession of a transient rental must comply with state law.] (p.11)
- Incorporated parking restrictions and boat parking restrictions into the information to be provided to occupants (p.11)
- Deleted "revocation" of a transient rental registration certificate as a penalty (p.13)
- Changed references to "Article" to "Ordinance" (throughout)
- Changed references to "tenants" to "occupants" (throughout)

Additionally, the City Attorney, City Manager, Assistant City Manager and Council Chairman met with Committee members to point out other possible changes to the ordinance that would make the Ordinance more enforceable, and limit any potential liability to the City. The following are changes that were accepted by the Committee members:

- Clarifying that the fee is imposed annually, and deleting the Council coordination with the Director of Finance. (p.6)
- Relocating the prohibition on fraudulent advertising to Sec 6 (p.7)
- Clarifying in which instances the Ordinance-specific noise ordinance applies. (p.2)
- Deleting the notary requirements for the responsible party authorization letter (p.8)
- Deleting the reference to the ambiguous "safety inspection". (p.9)
- Moving from an age-driven occupancy standard to a more common standard of two persons per bedroom plus two additional persons. (p.10)
- Adjusting the location of the posting of an evacuation map; one posting is sufficient. (p.11)
- Editing the 1,400 foot distance for sexual predators to 2,500 feet to match current City code. (p.12)
- Deleting the good neighbor code-of-conduct since it does not exist in current City code and would have to be written and approved in a separate ordinance. (p.12-13)
- Revising the suspension authority from the City Manager to the City's Code Enforcement Special Magistrate.(p.15)
- Granting significant discretion to the City's Special Magistrate on fine amounts and suspension periods. (p.15)
- Identifying a penalty for operating without a valid registration. City Council must determine the fine. (p.14)
- Clarifying that a transient rental can still operate as a long-term rental during a suspension period. (p.15)
- Deleting the requirement to notify newspapers and rental listing sites of a suspension and replacing it with notification of the responsible party.(p.16)
- Deleting the approval as to legal sufficiency by the City Attorney. (p.18)

It was the intention of City staff to put forward these edits in order to limit the City's potential liability by removing certain provisions that were ambiguous, unenforceable, or inconsistent with current City Code provisions and/or state law.

There were other recommendations made by staff that were not agreed to by the Committee members:

- Removal of the landline telephone requirement. (p.9)
- Removal of Section 15 (p.16-17)
- As drafted these regulations and the Ordinance would not apply to any vacation rental activity that occurs outside of the RSF zoning district. Although a large number of the City's parcels that are authorized to be used for dwellings are zoned RSF, this Ordinance would not capture any vacation rental use that may occur in RMF-6, Multi-Family dwellings; RMF-12, Multi-Family dwellings; RMF-16, Multi-Family dwellings; PUD or RT zoning districts.
- Pursuant to this Ordinance, certain regulations will be more restrictive in the RSF zoning district, as those regulations will apply to vacation rental properties. The noise regulation is more restrictive than current code requirements for other similarly situated single-family dwellings whether in the RSF or other City zoning districts.
- Creating noise regulations that are more restrictive than regulations applicable to the rest of the City may subject the Ordinance to legal challenge. Vacation rental uses in every other zoning district are subject to a less stringent noise regulations, including multifamily dwelling, which in most cases share a common wall with a neighboring property.
- Section 30-90(11)(c), creates a fine / penalty program that is inconsistent with both Chapter 162, Florida Statutes and Chapter 14 of Marco Island Code of Ordinances. Any regulation, which has the possible effect of prohibiting a vacation rental or regulating the frequency or duration of a vacation rental, subjects the Ordinance to legal challenge for being in conflict with state law, such as "suspension time frames".

Other recommendations by staff for Council consideration include:

- Remove reference to Transient Rental Noise Control and instead reference the currently adopted City noise ordinance for consistency across all single-family homes.(p.4)
- On page 3 Section 2 remove all dates. Specific dates can be determined as part of the implementation plan. (p.3)

Implementation of the Ordinance will require hiring anywhere from six to ten additional City personnel. City staff will establish a special revenue fund to collect the fees and carry out the rental program and enforcement. The implementation of the Ordinance will take, at a minimum, six months in order to allow the City to hire personnel, purchase registration software or contract

with a company that has a platform for registration, fee collection, 24/7 hotline, develop the application form, acknowledgment form, indoor posting forms, train staff, and provide education and information to rental owners in order to ensure compliance.

It is the staff's recommendation that the registration program begin April 1, 2023 and give vacation rental owners six months to comply with the registration requirements, having all transient rentals registered by October 1, 2023. This timeframe aligns with Section 2(b)(6) on page 4 of the proposed ordinance.

FUNDING SOURCE: Staff will establish a Special Revenue Fund to operate the Transient Rental Registration Program. A registration fee will be established by the City Council. Staff's estimate is that the fee should range between $475 - $750 per registrant. The amount depends on direction from City Council on the number and types of staff to hire, as well as the number of single family homes that register.

RECOMMENDATION: City Council should discuss the edits to the Ordinance as proposed by the Referendum Committee as well as those recommended by staff, and direct the City Attorney to make specific changes to the Ordinance in preparation for a second reading.

EXHIBIT “F”

WEISS SEROTA
HELFMAN COLE + BIERMAN

MEMORANDUM

To: Marco Island, City Council

From: Alan L. Gabriel, City Attorney

David N. Tolces, Assistant City Attorney

CC: Mike McNees, City Manager
Casey Lucius, Assistant City Manager
Mike Sheffield, City Clerk

Re: Transient Single-Family Home (RSF) Rental Registration Ordinance

Date: November 16 2022

After the Transient Single-Family Home (RSF) Rental Registration Ordinance (the "Ordinance") Referendum was approved by the Marco Island registered voters, the City Attorney's Office worked collectively with City Staff and the Referendum Committee to further develop and clarify the voter approved Ordinance. The following are measures that remain after First Reading of the Ordinance that City Council may wish to consider as further revisions after adoption on second reading:

1. The Ordinance ONLY applies to Residential Single Family ("RSF") zoned properties. As drafted these regulations would not apply to any vacation rental activity outside of the RSF zoning district. Although a large portion of the City's parcels authorized to be used for dwellings are zoned RSF, this Ordinance would not capture any residential dwelling in RMF-6, Multi-Family dwellings; RMF-12, Multi-Family dwellings; RMF-16, Multi-Family dwellings; PUD; or RT zoning districts. Neighboring property owners who are located within these other zoning districts within the City may endure similar impacts from rental properties.

2. The definition of "Noise" in Section 30-90.1(c) is vague as it refers to "any sounds emanating from the Transient Public Lodging Establishment. . . " The vagueness of the definition may make the Ordinance provisions related to noise difficult to enforce, as the definition could be considered very subjective and open to interpretation by the enforcing officer or a complaining neighbor.
3. The definition of "Sleeping Room," assumes that certain areas of residential dwellings are not appropriate for sleeping. In addition the use of the term "permanent furniture," is vague, as even a sleeper sofa can be removed from a residential dwelling.
4. Section 30-90.3(9)(b) regarding the submittal of an application to modify a Transient Rental Registration when a change to the Transient Rental is "proposed" should be clarified. As drafted, the language is unclear with respect to whether the modification application needs to be submitted at the time a development permit is sought, or after the improvements/changes are approved through the issuance of a certificate of occupancy/completion. This conflicts with the language in the next Section, 30-90.3(10), which specifies that "upon completion of changes or alterations".... "the owner shall notify the City...within ten (10) days of completion".
5. Section 30-90.8(b) – The maximum occupancy limitations are based upon "sleeping (bedroom) room." The basis for calculating the maximum number of persons may conflict with the definition of Sleeping Room.
6. Section 30-90.8(b)(2) – There does not appear to be any basis for the limitation of no more than one and one-half times the maximum occupants to stay overnight at the location, or no more than 20 persons at any gathering in any Transient Rental.
7. In Section 30-90.8(b)(3), it is unclear if the exemption for two people would increase the occupancy limit to 22 people.
8. Section 30-90.8(d) requires certain information to be in the rental/lease agreement. The required inclusion of language in a lease agreement raises several concerns regarding a property owner's right to contract without required governmental language being included in the lease agreement. This issue should be examined further once the Ordinance is approved.
9. In Section 30-90.8(e)(1), the required language that needs to be included on the posting within the Transient Rental is different from the definition for noise as contained in the Ordinance.

10. Section 30-90.9 creates new noise regulations which only apply to a certain class of "speakers." The noise restrictions applied to individuals at Transient Rental properties must comply with constitutional restrictions on the regulation of speech.
11. The language in Section 30-90.9.(a) appears to not apply when the Owner of the Transient Rental property is residing at the property. The language should be clarified to provide that the Transient Rental noise regulations apply when the "RSF property is being used and occupied as a Transient Rental".
12. In Section 30-90.9, the use of the term "plainly audible," is vague and would allow for inconsistent noise regulation concerning the "plainly audible for a period of one minute or longer at a distance of 25 ft." standard between 10 pm and 7 am. There are concerns regarding the ability to enforce this regulation in light of existing First Amendment precedent. This regulation is also inconsistent with the definition of noise in the Ordinance.
13. Section 30-90.11 creates a fine program that may be inconsistent with both Chapter 162, Florida Statutes, and Chapter 14 of the City's Code.
14. We remain uncertain as to the purpose of the Rental Registration Program Subordination language as contained in Section 30-90.15.

If you have any questions, or would like to discuss these comments further, please contact the City Attorney.

EXHIBIT “G”

CITY OF MARCO ISLAND

ORDINANCE NO. 22-**08**

AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA, AMENDING CHAPTER 30 , ARTICLE II, "ZONING," OF THE CITY OF MARCO ISLAND CODE OF ORDINANCES BY CREATING A NEW SECTION 30-90, TO ESTABLISH A SELF-FINANCED, TRANSIENT SINGLE-FAMILY HOME (RSF) RENTAL REGISTRATION PROGRAM; WITH DEFINED TERMS; CONDITIONS REQUIRING TRANSIENT, SINGLE-FAMILY HOME RENTAL REGISTRATION AND APPLICATION REQUIREMENTS; CREATING TRANSIENT RENTAL REGISTRATION PROCESS; DEFINING THE QUALIFICATION OF AND REQUIREMENTS FOR A RESPONSIBLE PARTY; TRANSIENT RENTAL STANDARDS/RULES AND INSPECTIONS; THE PROCESS FOR RENEWAL OF REGISTRATION AND PENALTIES RESULTING IN FINES AND/OR THE SUSPENSION OF THE CERTIFICATE OF RENTAL COMPLIANCE; PROVIDING FOR INTERPRETATION; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AUTHORITY TO CODIFY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS on August 23, 2022, the voters of the City of Marco Island (the "City") voted in favor of a referendum to implement a transient rental registration program in residential single family (RSF) districts pursuant to the ordinance referenced in the referendum (the "Ordinance"). The Ordinance as presented to and approved by Marco registered voters is attached hereto as **Exhibit "A"**; and

WHEREAS, as provided in the Ordinance, and pursuant to the City of Marco Island Charter, once approved by the City's electors, the Ordinance shall become effective upon its passage following second and final reading by the City Council; and

WHEREAS, in order to ensure conformance with the City's existing Code of Ordinances and Land Development Code, there are revisions necessary to be made to the Ordinance. A copy of the Ordinance with the necessary revisions is attached hereto as **Exhibit "B"** to this Ordinance; and

WHEREAS, the transient rental registration program provisions, as codified in Section 2 of this Ordinance are hereby adopted by the City of Marco Island City Council pursuant to the City Council's legal obligation following the August 23, 2022 referendum; and

WHEREAS, the City of Marco Island's Land Development Code needs to be updated and revised to "Create a Rental Registration Program for RSF Zoned properties; and

WHEREAS, the City Council of the City of Marco Island, Florida, finds the enclosed ordinance is consistent with the latest version of the Marco Island Comprehensive Plan; and

WHEREAS, the City Council of the City of Marco Island has determined that the proposed revisions to the Land Development Code are in the best interests of the general health, safety, and welfare of the residents and businesses of the City of Marco Island.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA, that:

SECTION 1. Recitals. The above recitals are true and correct and are hereby incorporated into this Ordinance as if fully restated herein.

SECTION 2. Amendment and Adoption. Chapter 30 "Land Development Code," Article II "Zoning" of the Code of Ordinances of the City of Marco Island, Florida, be, and the same are hereby amended by enacting a new Section 30-90 entitled "Rental Registration Program,", to provide as follows:[1]

CHAPTER 30 – LAND DEVELOPMENT CODE

****

ARTICLE II. – ZONING

****

Sec. 30-90. – Rental Registration Program

30-90.1. Definitions

(a) "Certificate of Transient Rental Compliance" means the document that is issued by the City that bears the words "Transient Rental Certificate of Compliance" and evidences that the person or entity, in whose name the document is issued, has complied with the provisions of this Section relating to transient rentals.

(b) "Garbage" which is included in the definition of "Litter," as defined in Section 18-32 of the City of Marco Island Code of Ordinances.

(c) "Noise" is defined as any sounds emanating from the Transient Public Lodging Establishment that can be heard from any adjacent or non-adjacent property. This includes, but is not limited to, human sounds, animal sounds, electronically generated sounds, mechanically generated sounds, musically generated sounds, or any other sounds that would not be heard if the Transient Public Lodging Establishment were not occupied. Any other sounds not applicable in this Section shall be subject to Sections 18-104 and 18-105 of the City of Marco Island Code of Ordinances.

[1] Additions to existing city code text are shown by underline; deletions from existing city code text are shown by ~~strikethrough~~. Revisions shown in shading are changes made after first reading and considered at second reading.

(d) "Residential property" as used as a Transient Rental under this Section shall be defined as a single family home public lodging establishment. See definition of Vacation Rental/Transient Rental below.

(e) "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 the property and the conduct and acts of transient occupants of residential properties. The Responsible Party shall be able to physically respond to the property within 1 (one) hour after notification.

(f) "Sleeping Room" shall mean a room or space within a dwelling unit, primarily designed and used or intended to be used for sleeping purposes, excluding, kitchens, bathrooms, shower rooms, water closet compartments, laundries, pantries, foyers, connecting corridors, garages, closets and storage space. Living rooms and/or family rooms may be utilized for sleeping if, and only if, permanent sleeping furniture is provided such as a sleeper sofa.

(g) "Transient Occupants" means any person, or guest or invitee of such person, who occupies or is in actual or apparent control or possession of residential property for a period of less than 30 days, registered as required pursuant to this Section. It shall be a rebuttable presumption that any person who holds themselves out as being an occupant or guest of an occupant of the Transient Rental is a Transient Occupant.

(h) "Vacation Rental/Transient Rental". Section 509.013(4)(a), Florida Statutes defines Transient Public Lodging Establishments as follows: "Public lodging establishment" includes a transient public lodging establishment as defined in subparagraph (i).

(i) "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.

(ii) The definition contained in subsection (i) shall apply to any individually or collectively owned RSF zoned single-family home, irrespective of the number of bedrooms, that is rented to Transient Occupants (guests) more than three (3) times in a calendar year for periods of less than thirty (30) days, or which is advertised or held out to the public as a place regularly rented to Transient Occupants.

(i) "Tenant," "Tenants," or "Group of Tenants" are defined as transient occupant(s) or guests.

30-90.2. Registration Required

(a) It is unlawful for any person to allow another person to occupy any residential property that is a single-family, RSF zoned, house or dwelling unit as a Transient Rental within the City of Marco Island, or offer such property for rent as a Transient Rental within the City of Marco Island, unless the person has registered the property as a Transient Rental property with the City of Marco Island, or Designee, and the Transient Rental property has been issued a Certificate of Transient Rental Compliance in accordance with the provisions of this Section.

(b) An application for registration as a Transient Rental is deemed pending when the application has been filed, all applicable fees have been paid to the City pursuant to Section 30-90.3, Code of Ordinances of the City of Marco Island, Florida, a Certificate of Transient Rental Compliance has

not been issued for the property and the application has not been rejected. A registration application rejected as incomplete is not pending. Notwithstanding subsection (a) above, a person may allow another person to occupy a residential property, for which a Certificate of Transient Rental Compliance has not been issued, as a Transient Rental, when an application is pending if:

(1) The residential property has an effective and valid license as a Transient Rental classification of public lodging establishment issued by the Florida Department of Business and Professional Regulations ~~prior to November 1, 2022~~; and

(2) The residential property is not in violation of any section of the Code of Ordinances of the City of Marco Island; and

(3) An application for registration of the residential property as a Transient Rental has been filed pursuant to Section 30-90.3 and all applicable fees have been paid; and

(4) That said occupancy of the Transient Rental was scheduled prior to June 30, 2023 ~~November 1, 2022~~, as evidenced by a written and validly executed transient occupancy agreement or contract provided to the City Manager, or his/her Designee~~, no later than November 15, 2022~~.

(5) The residential property has no fines or liens, payable to the City of Marco Island, outstanding at the time of Application.

(6) Transient Rental shall be registered annually ~~on or before September 30th~~.

30-90.3. Application for Transient Rental Registration

(a) A separate application for registration of a Transient Rental shall be made to the City Manager or his/her designee for each dwelling unit, as the term is defined in Section 30-90.1 of the City of Marco Island, Florida, Land Development Code, proposed for use as a Transient Rental and 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, electronic mail address, and phone number of owner of said property; Name, address, electronic mail address, and emergency contact phone number of Responsible Party for said property, which shall be a twenty-four (24) hour, seven (7) days a week contact phone number.

(3) That the phone number for the Responsible party will be answered twenty four (24) hours a day, seven (7) days a week by the Responsible Party.

(4) Acknowledgements by owner of the following:

a. That all overnight vehicles associated with the Transient Rental must be parked within a driveway located on the subject property and said driveway is constructed in compliance with the Code of Ordinances of the City of Marco Island.

b. That it shall be unlawful to allow or make any noise or sound that exceeds the limits set forth in Section 30-90.9, Transient Rental Noise Control.

c. That the owner shall comply with all applicable City, County, State and Federal laws, rules, Regulations, Ordinances and Statutes.

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 solid waste container shall be removed before 7:00 p.m. ~~6:00 pm~~ 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.

f. That other properties are not jointly shared commodities and should not be considered available for use by transient occupants of the property subject of the application; and

(5) Proof of owner's current ownership of the property;

(6) Proof of registration with the Florida Department of Revenue for sales tax collection (for Collier County Sales Tax); and

(7) Proof of licensure with the Florida Department of Business and Professional Regulation for a transient public lodging establishment.

(8) Minimum Insurance Requirements: Every short-term rental property licensed pursuant to this Section shall continuously maintain liability insurance appropriate to cover the short-term rental use, including any necessary policy endorsements, with a minimum of at least $1 million or solely conduct each short-term rental transaction through a platform that provides equal or greater liability insurance coverage to cover the short-term rental use. Evidence of Insurance: Every applicant shall tender to the City of Marco Island, or Designee, the certificates of insurance certifying that insurance of the types and in the amounts required by this chapter are in full force and effect at all times; and

(9) Proof of compliance with Subsection 30-90.8

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

b. An application for the modification of a Transient Rental registration is required when any of the following changes to the Transient Rental are proposed:

(1) A change in the gross square footage.

(2) A change in the number of bedrooms.

(3) A change in the maximum occupancy.

(4) A change in the number of parking spaces, or a change in the location of parking spaces.

(10) Upon completion of the changes or alterations to the Transient Rental property or the Transient Rental operation the owner shall notify the City, or Designee, within ten (10) days of completion. A new certificate of compliance may be issued if the conditions of Section 30-90.3.a have been met and all required permits have been issued for the changes or alterations.

30-90.4. Fee and Costs for Registration

(a) The City of Marco Island shall charge a Transient Rental Registration Administrative Fee. The Marco Island City Council, upon adoption of this Ordinance, will determine the amount of the Fee, per year, together with a consideration as to whether this fee is refundable or nonrefundable. The Marco Island City Council shall determine the funding method for the Registration Program, and adopt the fee by Resolution.

(1.) This annually-imposed Fee is subject to yearly adjustment and will be calculated as the total cost of the Program, including Administrative and Enforcement costs, divided by the number of Transient Rental Homes. This Fee will include the cost of the yearly Fire Inspection fee. Each Fiscal year, the City Manager, Director of Finance and any other Designated Personnel, will determine the new Program Cost Administration Fee that will be adjusted to reflect any shortage or overage for the new Fiscal year. It is the intention of the Program to be administered to not generate a profit or loss for the Program. The Marco Island City Council shall determine all funding aspects of the Program.

(2.) The first year Administration Fee, shall be determined by the Marco Island City Council, and shall be assessed on per Transient Rental Home basis.

(b) No Registration can be completed if a home has outstanding fees, fines or liens owed to the City of Marco Island for any reason(s). Proof of payment of any outstanding fees, fines or liens shall be submitted prior to the issuance of any Certificate of Transient Rental Compliance.

30-90.5. Responsible Party Required.

Whenever any property is required to be registered under this Section, the owner shall appoint a natural person 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 of notice to the owner. An initial Responsible Party shall be designated, and name submitted with the application for registration, and the City Manager or his/her designee shall thereafter be notified of any change of Responsible Party within ten (10) days of such change. Further, it is the affirmative duty of the Responsible Party to:

(a) Provide all guests prior to occupancy of the property with a written summary, printed in the English and Spanish language, of applicable City of Marco Island Ordinances concerning noise, vehicle parking, garbage, and common area usage. The summary shall include citations to the applicable City of Marco Island Ordinances and instructions on how to access the complete written text. The summary shall be posted in the interior of the structure, prominently near the main entrance of the establishment.

(b) Maintain all properties under their control in compliance with the Code of Ordinances of the City of Marco Island, Florida.

(c) See that the provisions of this Section are complied with and promptly address any violations of this Section or any violations of law which may come to the attention of the Responsible Party.

(d) Be available with authority to address and coordinate solutions to problems with the transient rental of the property twenty-four (24) hours a day, seven (7) days a week.

(e) Be situated close enough to the property as to be able to respond in person within one (1) hour of being notified by a Transient Rental occupant, law enforcement officer, a City Manager designated Rental Compliance Officer/employee, emergency personnel, or the City, of issues related to the Transient Rental. Responsible party shall respond when requested.

(f) Keep available a register of all current guests, only, which shall be available for inspection by authorized personnel of the City of Marco Island at all times.

(g) Maintain, or arrange for the maintenance, of the entire property free of garbage and litter, provided however, that this subsection shall not prohibit the storage of garbage and litter in authorized receptacles for collection.

(h) Conduct an on-site inspection of the Transient Rental at the end of each rental period to assure continued compliance with the requirements of this Section and any applicable state regulations.

30-90.6 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 Section. Transient Rental applications shall be sworn to under penalty of perjury. Any owner of any Transient Rental who engages in fraudulent advertising or activity shall be considered as engaging in a violation of this Section.

30-90.7 Minimum Requirements for Issuance of a Certificate of Compliance.

The City Manager or his/her designee may issue a Certificate of Compliance to the applicant upon proof of the following:

(a) The owner or Responsible party completes the City of Marco Island Transient Rental registration application form.

(b) The Transient Rental Registration Administrative Fee has been paid to the City of Marco Island.

(c) A signed and witnessed Responsible Party Authorization Letter (sample provided with Transient Rental Application Form). The Letter will be signed by both the Owner and Responsible Party and both signatures will be witnessed.

(d) A Florida Department of Revenue certificate of registration for purposes of collecting and remitting tourist development taxes, sales surtaxes and/or transient rental taxes.

(e) A Florida Department of Business and Professional Regulation license as a transient public lodging establishment.

(f) An affidavit, demonstrating maintaining initial and on-going compliance with Transient 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 Chapter 61C and 69A, Florida Administrative Code, as may be amended from time to time ; and

(g) A copy of the form Transient Occupancy agreement to be used when contracting with Transient Occupants.

(h) That the Transient Rental has satisfied the fire safety inspection requirements, annually, as provided in Section 30-90.8, of the Code of Ordinances of the City of Marco Island.

(i) Submission of the insurance document(s) referenced in Section 30-90.3.

(j) That the Transient rental is not subject to a suspension pursuant to Section 30-90.11.

30-90.8. Transient Rental Standards.

The following standards shall govern the use of any transient rental as a permitted use:

(a) Minimum life/safety requirements:

(1) Swimming pool, spa and hot tub safety. A swimming pool, spa or hot tub shall comply with the current standards of the "Residential Swimming Pool Safety Act," Chapter 515, Florida Statutes, as may be amended from time to time.

(2) Dwelling Units. All dwelling units shall meet the single-family dwelling minimum requirements of Sections 30-81 through 30-89 and Section 30-10, Definitions of a Dwelling, Single Family or One Family of the Code of Ordinances of the City of Marco Island, Florida, as may be amended from time to time.

(3) Smoke and carbon monoxide (CO) detection and notification system. A smoke and carbon monoxide (CO) detection and notification system within the transient rental unit shall be installed, operational and interconnected/hard-wired and receive primary power from the building wiring. The smoke and carbon monoxide (CO) detection and notification system will be continually maintained and tested consistent with the requirements of Section R314, Smoke Alarms, and Section R315, Carbon Monoxide Alarms, of the Florida Building Code – Residential.

(4) 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 location.

(5) That all overnight vehicles associated with the Transient Rental must be parked within a garage and/or on a driveway located on the subject property and in compliance with the Code of Ordinances of the City of Marco Island.

(6) Local phone service. At least one landline telephone with the ability to call 911 shall be available in the main level common area in the Transient Rental.

(7) Included in the yearly Registration Fee described in Section 30-90.4 is the cost of a Marco Island Fire Department Fire Safety inspection. This inspection shall be conducted by a City of Marco Island Licensed Fire Inspector and shall be completed in accordance with any applicable state and local fire safety regulations. This inspection, and any required corrections/modifications must be completed prior to the issuance of a Transient Rental Certificate of Compliance.

(b) Maximum occupancy. The occupancy of a Transient Rental shall not exceed:

(1) Two (2) persons per Sleeping (Bedroom) Room. The number of Bedrooms shall match the building plans or records if no plans exist, and shall be used in determining the number of Sleeping Rooms at the Transient Rental. Any advertisement or hold out for rental of the transient property must reflect

and match the number of Bedrooms on record with the City of Marco Island Building Department or Collier County.

(2) The maximum number of persons allowed to gather at a Transient Rental shall not exceed one and one-half times the maximum occupants authorized to stay overnight at that site, as shown on the Certificate of Compliance, and in no event shall a gathering exceed 20 persons. After 10 p.m., the number of occupants shall not exceed the maximum occupancy described in 30-90.8(b)1, above plus a maximum of two (2) additional persons. By way of example only, the maximum number of occupants past 10 p.m. in a three-bedroom house is eight (8).This subsection shall not apply to owner-occupied Transient Rentals when the property owner is physically present on the site during the gathering.

(3) Up to two (2) persons are exempt from and shall not count towards the occupancy limits set in subsections 8(b)2 above.

(c) Solid waste handling and containment. City solid waste containers shall be provided. Appropriate screening and storage requirements for solid waste containers shall apply per any development approval. 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 7:00 p.m. ~~midnight~~ of the day of pickup.

(d) Minimum transient occupancy agreement wording. The transient occupancy agreement shall contain the minimum information as provided for in subsections 30-90.8 (b), (d), and (e). The transient occupant responsible for all guests and occupancy payments will sign the transient occupancy agreement acknowledging the rules. The wording of such an agreement shall contain a clause indicating that the occupant(s) acknowledge the rules and will agree to vacate the premises in the event of a violation of this Section upon request by the Owner or Responsible Party and whereas any such vacation shall occur not more than 12 hours upon such request.

(e) Minimum transient occupancy information. The transient rental occupants shall be provided with a summary of the information required in the agreement described in subsection 30-90.8(d) with instructions on how to access the full text and the Owner shall post the following conspicuously within the establishment:

(1) A statement advising the Occupant that any sound shall not be plainly audible for a period of one (1) minute or longer at a distance of twenty-five (25) feet or more when measured from the source property line between the hours of 10:00 p.m. and 7:00 a.m. daily and at a distance of fifty (50) feet or more when measured from the source property line between the hours of 7:00 a.m. and 10:00 p.m. daily.

(2) The parking restrictions for occupant vehicles

(3) Any applicable boat storage and docking regulations and restrictions

(4) A sketch or photograph of the location of the off-street parking spaces.

(5) The days and times of trash pickup.

(6) The notice of sea turtle nesting season and sea turtle lighting regulations, if applicable.

(7) The location of the nearest hospital; and

(8) The City's non-emergency police phone number.

(9) There shall be posted, in a conspicuous location a legible copy of the building evacuation map – Minimum 8-1/2" by 11".

(f) Designation of a transient rental responsible party capable of meeting the duties provided in subsection 30-90.5.

(g) Advertising. Any advertising of the transient rental unit shall conform to information included in the Transient Rental Certificate of Compliance and the property's approval, particularly as this pertains to maximum occupancy. A statement stating "it is unlawful for a sexual offender or sexual predator to occupy this residence" if so determined pursuant to subsection 30-90.8.h of this code and the Certificate of Compliance number shall be included in all advertising.

(h) Sexual offenders and sexual predators. It is unlawful for any property owner or designated representative to allow another person to occupy any residential property as a Transient Rental within the City of Marco Island, as a Transient Occupant if such property owner or designated representative knew 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 the Marco Island Code of Ordinances, Section 18-200, if such place, structure, or part thereof, trailer or other conveyance, is located within two thousand five hundred feet (2,500') of any school, designated public school bus stop, child day care facility, park or playground or other place where children regularly congregate. Property owner or designated representative shall determine prior to submission of an application for a Certificate of Compliance whether the Transient Rental property is located in an area unlawful sexual offenders or sexual predators to occupy pursuant to section 18-200 of the Marco Island Code of Ordinances.

(i) Posting of Certificate of Compliance. The Certificate of Compliance shall be posted on the back of or next to the interior of the main entrance door and shall include at a minimum the name, address and phone number of the Responsible party, the maximum occupancy of the Transient Rental and a statement stating "it is unlawful for a sexual offender or sexual predator to occupy this residence" if so determined pursuant to subsection 30-90.8.h.

(j) That all overnight vehicles associated with the Transient Rental must be parked within a garage or on the subject Transient Rental driveway in compliance with the Code of Ordinances of the City of Marco Island.

(k) Other standards. Any other standards contained with the Code of Ordinances of the City of Marco Island to include, but not be limited to: Transient Rental noise, setbacks, stormwater and similar provisions.

30-90.9. Transient Rental Noise Control

(a) Notwithstanding existing Noise Regulations contained in Article IV, Section 18, of the Marco Island Code of Ordinances, the use of a RSF property as a Transient Rental is a "public lodging" use of a home in a residential neighborhood. As such, a much stricter/quieter set of noise parameters must be defined for this application. For any RSF property being used as a Transient Rental, the Noise Regulations shall be defined as:

(b) Any ~~sound~~ noise shall not be plainly audible for a period of one (1) minute or longer at a distance of twenty-five (25) feet or more when measured from the source property line between the hours of 10:00 p.m. and 7:00 a.m. daily and at a distance of fifty (50) feet or more when measured from the source property line between the hours of 7:00 a.m. and 10:00 p.m., daily."

(c) For all other Noise applications, Article IV of the Marco Island Code of Ordinances shall apply.

30-90.10 Expiration of Registration and Certificates of Compliance

(a) All registrations for which a certificate of compliance has been issued under the provisions of this Section shall be valid for no more than one year, and all registrations and certificates of compliance shall expire ~~on September 30th of~~ each year. The application for renewal must be submitted no later than sixty (60) days prior to the ~~September 30th~~ expiration date. Dates for renewal and applicable late renewal fees shall be established by resolution of the City Council of the City of Marco Island, or Designee, in accordance with Section 30-90.4., and shall be charged to an application for renewal submitted prior to the expiration date but after the sixty (60) days required by this section. All applications for renewal received after ~~the annual expiration date September 30th~~ shall be processed as a new application and subject to all applicable fees.

30-90.11 Penalties and Offenses

(a) Any Certificate of Rental Compliance issued pursuant to this Section may be or suspended by the Magistrate pursuant to Section 11(d) of this Section. Such suspension is in addition to any penalty provided herein.

(b) Offenses/violations.

(1) Non-compliance with any provisions of this Section shall constitute a violation of this Section.

(2) Separate violations. Each day a violation exists shall constitute a separate and distinct violation, except that occupancy violations of subsection 30-90.8.b. regarding occupancy, and parking violations of subsection 30-90.3 regarding parking shall constitute a single violation for a rental period.

(c) Remedies/enforcement.

(1) Violations of this Section 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 transient rental program it is key that transient rental Responsible Parties are responsive and responsible in the management of the property for compliance with this section.

Any person, persons, Transient Rental owner, guilty of violating any of the provisions of this Section shall be deemed guilty of a civil infraction. The amount of the civil penalty may be up to $250.00 for the first violation, up to $500.00 for the second violation within a 24 month period, up to $1,000.00 for the third violation within a 24 month period, up to $2,000.00 for the fourth violation within a 24 month period, up to $4,000.00 for the fifth violation within a 24 month period, and up to $5,000.00 for the sixth and any subsequent violations within a 24 month period.

(2) Any person who operates a Transient Rental and fails to register as required in Sections 3 and 4 of this Section shall be subject to a daily fine of

$1,000.00 for each day the Transient Rental is operated without a valid Transient Rental Certificate of Compliance.

(3) Additional remedies. Nothing contained herein shall prevent the City of Marco Island from seeking all other available remedies which may include, but not be limited to, suspension of a Transient Rental Certificate of Compliance, injunctive relief, liens and other civil and criminal penalties as provided by law, as well as referral to other enforcing agencies.

(d) Suspension of Transient Rental Certificate of Compliance. In addition to any fines and any other remedies described herein or provided for by law, a magistrate shall suspend a Transient Rental Certificate of Compliance in accordance with the following:

(1) Suspension time frames.

a. Upon a fourth violation of this Section within 24 months the Transient Rental Certificate may be suspended for a period of up to one hundred eighty (180) calendar days at the discretion of the magistrate.

b. Upon a fifth violation of this Section within 24 months the Transient Rental Certificate may be suspended for a period of up to three hundred sixty-five (365) calendar days at the discretion of the magistrate.

c. For each additional violation of this Section within 24 months the Transient Rental Certificate may be suspended for a period of up to an additional thirty (30) calendar days at the discretion of the magistrate, up to a maximum period of twelve (12) months. For example, the sixth violation shall be for three hundred ninety-five (395) calendar days; the seventh violation shall be for four hundred fifteen (415) calendar days, and so on.

d. A Transient Rental Certificate of Compliance shall be subject to temporary suspension beginning five (5) working days after a citation is issued for a violation of the Florida Building Code, or Florida Fire Prevention Code. Such suspension shall remain in place until the transient rental is reinspected, and it is determined that the violation no longer exists by the City, in accordance with d.2, below.

(2) Suspension restrictions. A transient rental may not provide transient rental occupancy during any period of suspension of a Transient Rental certificate. This provision shall not prevent a Transient Rental owner from exercising a long-term rental (any rental 30 continuous days or more) during a suspension period. However, in the event a transient occupant does not occupy the Transient Rental for at least 30 continuous days, the Transient Rental owner cannot initiate a new rental lease until the full 30-day period has elapsed. A Transient Rental that enables and executes Transient Rental occupancy for any period less than 30 continuous days during a suspension period shall be considered to be in violation of this Section and shall be subject to the enforcement penalties of this section.

a. The suspension shall begin immediately following notice, commencing either;

i. at the end of the current transient rental lease period; or

ii. within thirty (30) calendar days, whichever date commences earlier, or as otherwise determined by the Magistrate.

b. Operation during any period of suspension shall be deemed a violation pursuant to this Section and shall be subject to daily fine, up to One Thousand Dollars ($1,000.00) or to the maximum amount as otherwise provided in Florida Statutes for repeat violations, for each day that the transient rental operates during a period of suspension.

c. An application for a renewal may be submitted during the period of suspension: however, no Certificate of Compliance may be issued for the transient rental until the period of suspension has expired.

d. A Transient Rental Certificate of Compliance cannot be reinstated from suspension if any fines, liens, fees are outstanding and due to the City of Marco Island.

e. In accordance with Section 30-90.2.a, any Transient Rental property where the Transient Rental Certificate of Compliance has been suspended, is not legally eligible to be advertised as a short-term rental property during the period of suspension. The City of Marco Island, or Designee, will notify the Responsible Party with regard to a suspension.

30-90.12 Complaints.

(a) Whenever a violation of this Section occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof, shall be filed with the City Manager or his/her designee. The City Manager or his/her designee shall promptly record such complaint, investigate, and take action thereon in accordance with this Section.

(b) A Violation and/or complaint may also be filed by telephone directly to the City of Marco Island, or Designee, Rental Hotline. This number will be published, when operational, on the City website and via local newspapers. Operation of the Hotline will be determined by the City Manager and/or his or her Designee.

30-90.13 Enforcement.

The provisions of this Section shall be enforced as provided in Section 14 - Code Enforcement, of the Code of Ordinances of the City of Marco Island, Florida.

30-90.14 Rental Registration Program Administration.

The Marco Island City Council shall be responsible for the implementation and funding for the Program described in this Ordinance.

30-90.15 Rental Registration Program Subordination.

(a) Upon any determination that Short Term Rentals are illegal on Marco Island, this Section shall not apply for any such illegal rental(s) and the illegal rental(s) shall cease to operate in accordance with the provisions herein.

(b) However, in the event that any other rental in the RSF district that is not deemed illegal and that is defined by Florida State Statutes as a "Public Lodging Establishment" or any transient rental that is not a primary or principal residence of the renting party, any such rental shall be governed and regulated by this Section.

(c) In the event that the City of Marco Island determines that Short Term Transient Rentals are not allowed in RSF zoning, no new Transient Rental Compliance Certificates will be issued, and the Rental Registration Program will be discontinued as of 30 September of the year such rental ban is determined. Transient Rentals will be allowed, in accordance with Section 30-90 of the Marco Island Code of Ordinances until 30 September of the year of the Short Term Rental ban.

SECTION 3. Severability / Interpretation.

(a) If any term, section, clause, sentence or phrase of this Ordinance is for any reason held to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the other remaining terms, section, clauses, sentences, or phrases or portions of this Ordinance, and this Ordinances 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 this Ordinance, underlined words indicate additions to existing text, and ~~stricken through~~ words include deletions from existing text. Asterisks (****) indicate a deletion from the Ordinance of text, which continues to exist 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 4. Conflicts. All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict with the provisions of this Ordinance are hereby superseded and resolved to the extent of any conflict in favor of the provisions of this Ordinance.

SECTION 5. Codification. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the City Code of the City of Marco Island, and that the sections of this Ordinance may be renumbered to accomplish such intent.

SECTION 6 Effective Date. This Ordinance shall take effect immediately upon its passage on second and final reading of the Marco Island City Council.

PASSED AND ADOPTED in regular session on second and final reading on this _____ day of _____ 2022.

ATTEST: **CITY OF MARCO ISLAND, FLORIDA**

By: _____ By: _____
Michael Sheffield, City Clerk _____, Chair

Approved as to form:

By: _____
Alan L. Gabriel, City Attorney

ORDINANCE NO. 22-XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA, ADDING TO THE LAND DEVELOPMENT CODE OF THE CODE OF ORDINANCES, IN ARTICLE II, ZONING, SECTION 30-90, CREATING A SELF-FINANCED, TRANSIENT SINGLE-FAMILY HOME (RSF) RENTAL REGISTRATION PROGRAM;, CREATING DEFINED TERMS; CONDITIONS REQUIRING TRANSIENT, SINGLE-FAMILY HOME RENTAL REGISTRATION AND APPLICATION REQUIREMENTS; CREATING TRANSIENT RENTAL REGISTRATION PROCESS; DEFINING THE QUALIFICATION OF AND REQUIREMENTS FOR A RESPONSIBLE PARTY; TRANSIENT RENTAL STANDARDS/RULES AND INSPECTIONS; THE PROCESS FOR RENEWAL OF REGISTRATION AND PENALTIES RESULTING IN FINES AND/OR THE SUSPENSION OF THE CERTIFICATE OF RENTAL COMPLIANCE; AND PROVIDING FOR SEVERABILITY,; PROVIDING A CONFLICTS CLAUSE, SEVERABILITY CLAUSE, AUTHORITY TO CODIFY, AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City of Marco Island's Land Development Code needs to be updated and revised to "Create a Rental Registration Program for RSF Zoned properties; and

WHEREAS, the City Council of the City of Marco Island, Florida, finds the enclosed ordinance is consistent with the latest version of the Marco Island Comprehensive Plan.

WHEREAS, the City Council of the City of Marco Island has determined that the proposed revisions to the Land Development Code are in the best interests of the general welfare of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF Marco Island, FLORIDA, that:

Section 1. The above recitals are true and correct and are hereby incorporated into this Ordinance as if fully restated herein.

Section 2. Section 30-90, of the Land Development Code of the Code of Ordinances of the City of Marco Island, Florida, shall be created and titled Rental Registration Program, and shall hereby include the following:

Section 30-90

1. Definitions

Certificate of Transient Rental Compliance means the document that is issued by the City that bears the words "Transient Rental Certificate of Compliance" and evidences that the person or

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entity, in whose name the document is issued, has complied with the provisions of this article relating to transient rentals.

Garbage (included as Litter) as defined in Section 18-32 of the Marco Island Code of Ordinances.

Residential property as defined in Chapter 30, Division 2 of the Marco Island Code of Ordinances

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 the property and the conduct and acts of occupants of residential properties. The Responsible Party shall be able to physically respond to the property within 1 (one) hour after notification.

Sleeping Room shall mean a room or space within a dwelling unit, primarily designed and used or intended to be used for sleeping purposes, excluding living rooms, family rooms, kitchens, bathrooms, shower rooms, water closet compartments, laundries, pantries, foyers, connecting corridors, closets and storage space. A couch/sofa and/or pull-out couch/sofa can be used for occupants 13 years and under, as cited in 30.90.8.b.1.c.

Transient Occupants means any person, or guest or invitee of such person, who occupies or is in actual or apparent control or possession of residential property for a period of less than 30 days, registered as required pursuant to this Article to be registered as, a Transient 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 Transient Rental is a Transient Occupant.

Vacation Rental/Transient Rental shall mean any individually or collectively owned RSF zoned single-family home, irrespective of the number of bedrooms, that is rented to Transient Occupants more than three (3) times in a calendar year for periods of less than thirty (30) days, or which is advertised or held out to the public as a place regularly rented to Transient Occupants.

2. Registration Required

(a) It is unlawful for any person to allow another person to occupy any residential property that is a single-family, RSF zoned, house or dwelling unit as a Transient Rental within the City of Marco Island, or offer such property for rent as a Transient Rental within the City of Marco Island, unless the person has registered the property as a Transient Rental property with the City of Marco Island, or Designee, and the Transient Rental property has been issued a Certificate of Transient Rental Compliance in accordance with the provisions of this Article.

(b) An application for registration as a Transient Rental is deemed pending when the application has been filed, all applicable fees have been paid to the City pursuant to Section 30-90.3,

Code of Ordinances of the City of Marco Island, Florida, a Certificate of Transient Rental Compliance has not been issued for the property and the application has not been rejected. A registration application rejected as incomplete is not pending. Notwithstanding subsection (a) above, a person may allow another person to occupy a residential property, for which a Certificate of Transient Rental Compliance has not been issued, as a Transient Rental, when an application is pending if:

(1) The residential property has an effective and valid license as a Transient Rental classification of public lodging establishment issued by the Florida Department of Business and Professional Regulations prior to November 1. 2022; and

(2) The residential property is not in violation of any section of the Code of Ordinances of the City of Marco Island; and

(3) An application for registration of the residential property as a Transient Rental has been filed pursuant to Section 30-90.3 and all applicable fees have been paid; and

(4) That said occupancy of the Transient Rental was scheduled prior to August 15, 2022, as evidenced by a written and validly executed rental agreement or contract provided to the City Manager, or his/her Designee, no later than November 15, 2022.

(5) The residential property has no fines or liens, payable to the City of Marco Island, outstanding at the time of Application.

(6) Transient Rental shall be registered annually on or before the thirtieth (30th) day of September.

3. Application for Transient Rental Registration

(a) A separate application for registration of a Transient Rental shall be made to the City Manager or his/her designee for each dwelling unit, as the term is defined in Section 30-90.1 of the City of Marco Island, Florida, Land Development Code, proposed for use as a Transient Rental and 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, electronic mail address, and phone number of owner of said property; Name, address, electronic mail address, and emergency contact phone number of Responsible Party for said property, which shall be a twenty-four (24) hour, seven (7) days a week contact phone number.

(3) That the phone number for the Responsible party will be answered twenty-four

(24) hours a day, seven (7) days a week by the Responsible Party.

(4) Acknowledgements by owner of the following:

a. That all overnight vehicles associated with the Transient Rental must be parked within a driveway located on the subject property and said driveway is constructed in compliance with the Code of Ordinances of the City of Marco Island.

b. That it shall be unlawful to allow or make any noise or sound that exceeds the limits set forth in Section 30-90.9, Transient Rental Noise Control.

c. That the owner shall comply with all applicable City, County, State and Federal laws, rules, Regulations, Ordinances and Statutes.

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 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.

f. That other properties are not jointly shared commodities and should not be considered available for use by transient occupants of the property subject of the application; and

(5) Proof of owner's current ownership of the property.

(6) Proof of registration with the Florida Department of Revenue for sales tax collection (for Collier County Sales Tax); and

(7) Proof of licensure with the Florida Department of Business and Professional Regulation for a transient public lodging establishment.

(9) Minimum Insurance Requirements: Every short-term rental property licensed pursuant to this Section shall continuously maintain liability insurance appropriate to cover the short-term rental use, including any necessary policy endorsements, with a minimum of at least $1 million or solely conduct each short-term rental transaction through a platform that provides equal or greater liability insurance coverage to cover the short-term rental use. Evidence of Insurance: Every applicant shall tender to the City of Marco Island, or Designee, the certificates of insurance certifying that insurance of the

types and in the amounts required by this chapter are in full force and effect at all times; and

(8) Proof of compliance with Subsection 30-90.8

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

b. An application for the modification of a Transient Rental registration is required when any of the following changes to the Transient Rental are proposed:

(1) A change in the gross square footage.

(2) A change in the number of bedrooms.

(3) A change in the maximum occupancy.

(4) A change in the number of parking spaces, or a change in the location of parking spaces.

Upon completion of the changes or alterations to the Transient Rental property or the Transient Rental operation the owner shall notify the City, or Designee, within ten (10) days of completion. A new certificate of compliance may be issued if the conditions of Section 30-90.3.a have been met and all required permits have been issued for the changes or alterations.

4. Fee and Costs for Registration

(a) The City of Marco Island shall charge a fee for Rental Registration. The Marco Island City Council, upon adoption of this Ordinance, will determine the amount of the Fee, per year, together with a consideration as to whether this fee is refundable or nonrefundable. The Marco Island City Council shall determine the funding method for the Registration Program. It should be noted that the State of Florida is considering a maximum Registration Fee of $50 (fifty dollars) per year for all Rental Registrations.

1. In addition to the yearly Registration Fee, every Applicant of a Rental Compliance Certificate shall be assessed a non-refundable Program Cost Administration Fee. This Fee is subject to yearly adjustment and will be calculated as the total cost of the Program, including Administrative and Enforcement costs, divided by the number of Transient Rental Homes. This Fee will include the cost of the yearly Fire Inspection fee. Each Fiscal year, the City Manager, Director of Finance and any other Designated Personnel, will determine the new Program Cost Administration Fee that will be adjusted to reflect any shortage or overage for the new Fiscal year. It is the intention of the Program to be administered to not generate a profit or loss for the Program. The Marco Island City Council shall determine all funding aspects of the Program, in coordination with the Director of Finance.

2. The first year Program Cost Administration Fee, shall be determined by the Marco Island City Council, and shall be assessed on per Transient Rental Home basis.

(b) No Registration can be completed if a home has outstanding fees, fines or liens owed to the City of Marco Island for any reason(s). Proof of payment of any outstanding fees, fines or liens shall be submitted prior to the issuance of any Certificate of Transient Rental Compliance.

5. Responsible party required.

Whenever any property is required to be registered under this Article, the owner shall appoint a natural person 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 of notice to the owner. An initial Responsible Party shall be designated, and name submitted with the application for registration, and the City Manager or his/her designee shall thereafter be notified of any change of Responsible Party within ten (10) days of such change. Further, it is the affirmative duty of the Responsible Party to:

(a) Provide all guests prior to occupancy of the property with a written summary, printed in the English and Spanish language, of applicable City of Marco Island Ordinances concerning noise, vehicle parking, garbage, and common area usage. The summary shall include citations to the applicable City of Marco Island Ordinances and instructions on how to access the complete written text. The summary shall be posted in the interior of the structure, prominently near the main entrance of the establishment.

(b) Maintain all properties under their control in compliance with the Code of Ordinances of the City of Marco Island, Florida.

(c) 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.

(d) Be available with authority to address and coordinate solutions to problems with the rental of the property twenty-four (24) hours a day, seven (7) days a week.

(e) Be situated close enough to the property as to be able to respond in person within one (1) hour of being notified by a Transient Rental occupant, law enforcement officer, a City Manager designated Rental Compliance Officer/employee, emergency personnel, or the City, of issues related to the Transient Rental. Responsible party shall respond when requested.

(f) Keep available a register of all current guests, only, which shall be available for inspection by authorized personnel of the City of Marco Island at all times.

(g) Maintain, or arrange for the maintenance, of the entire property free of garbage and litter, provided however, that this subsection shall not prohibit the storage of garbage and litter in authorized receptacles for collection.

(h) Conduct an on-site inspection of the Transient Rental at the end of each rental period to assure continued compliance with the requirements of this chapter.

6. 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. Transient 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.

7. Minimum Requirements for Issuance of a Certificate of Compliance.

The City Manager or his/her designee may issue a Certificate of Compliance to the applicant upon proof of the following:

(a) The owner or Responsible party completes the City of Marco Island Transient Rental registration application form.

(b) The non-refundable Transient Rental registration fee has been paid to the City of Marco Island.

(c) A signed and Notarized Responsible Party Authorization Letter (sample provided with Transient Rental Application Form). The Letter will be signed by both the Owner and Responsible Party and both signatures will be Notarized.

(d) A Florida Department of Revenue certificate of registration for purposes of collecting and remitting tourist development taxes, sales surtaxes and/or transient rental taxes.

(e) A Florida Department of Business and Professional Regulation license as a transient public lodging establishment.

(f) An affidavit, demonstrating maintaining initial and on-going compliance with Transient 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

(g) A copy of the form Transient rental/lease agreement to be used when contracting with Transient Occupants and guests.

(h) That the Transient Rental has satisfied the inspection requirements, annually, as provided in Section 30-90.8, of the Code of Ordinances of the City of Marco Island.

(i) Submission of the insurance document(s) referenced in Section 30.90.3.a.9.

(j) That the Transient rental is not subject to a suspension pursuant to Section 30-90.11.

8. **Transient Rental Standards.**

The following standards shall govern the use of any transient rental as a permitted use:

(a) Minimum life/safety requirements:

1. Swimming pool, spa and hot tub safety. A swimming pool, spa or hot tub shall comply with the current standards of the Residential Swimming Pool Safety Act, Chapter 515, Florida Statutes.

2. Dwelling Units. All dwelling units shall meet the single-family dwelling minimum requirements of Article VI. Minimum Housing Code, Chapter 9, Buildings and Construction of the Code of Ordinances of the City of Marco Island, Florida.

3. Smoke and carbon monoxide (CO) detection and notification system. A smoke and carbon monoxide (CO) detection and notification system within the transient rental unit shall be installed, operational and interconnected/hard-wired and receive primary power from the building wiring. The smoke and carbon monoxide (CO) detection and notification system will be continually maintained and tested consistent with the requirements of Section R314, Smoke Alarms, and Section R315, Carbon Monoxide Alarms, of the Florida Building Code – Residential.

4. 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 location.

5. That all overnight vehicles associated with the Transient Rental must be parked within a garage and/or on a driveway located on the subject property and in compliance with the Code of Ordinances of the City of Marco Island.

6. Local phone service. At least one landline telephone with the ability to call 911 shall be available in the main level common area in the Transient Rental.

7. Included in the yearly Registration Fee described in Section 30-90.4 is the cost of a Marco Island Fire Dept. Fire Safety inspection. This inspection, and any required corrections/modifications must be completed prior to the issuance of a Transient Rental Certificate of Compliance.

8. Also required on a yearly basis, is a safety inspection by a City of Marco Island Designated/Authorized Inspector. This inspection, and any required corrections/modifications must be completed prior to the issuance of a Transient Rental Certificate of Compliance.

(b) Maximum occupancy. The occupancy of a Transient Rental shall not exceed:

1. Two (2) persons per Sleeping (Bedroom) Room. The number of Bedrooms is reflected in the records of the Collier County Property Appraiser's Office (via cross-referencing Building Permit look-up) and shall be used in determining the number of Sleeping Rooms at the Transient rental.

a. The maximum number of persons allowed to gather at a Transient Rental shall not exceed one and one-half times the maximum ADULT occupants authorized to stay overnight at that site, as shown on the Certificate of Compliance, and in no event shall a gathering exceed 20 persons. After 10 pm, the number of occupants shall not exceed the maximum occupancy described in (b)1, above plus a maximum of 4 persons under the age of 13 years.

This subsection a. shall not apply to owner-occupied Transient Rentals when the property owner is physically present on the site during the gathering.

b. Up to four (4) persons under 13 years of age are exempt from and shall not count towards the occupancy limits set in subsections a. and b. above.

(c) Solid waste handling and containment. City solid waste containers shall be provided as required. Appropriate screening and storage requirements for solid waste containers shall apply per any development approval. 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.

(d) Minimum transient rental/lease agreement wording. The transient rental/lease agreement shall contain the minimum information as provided for in this subsection 30-90.8

(e) Minimum transient rental lessee information. The transient rental lessee shall be provided with a summary of the information required in subsection 30-90.8 with instructions on how to access the full text and shall post the following conspicuously within the establishment:

1. A statement advising the Occupant that any sound shall not be plainly audible for a period of one (1) minute or longer at a distance of twenty-five (25) feet or more when measured from the source property line between the hours of 10:00 p.m. and 7:00 a.m. daily and at a distance of fifty (50) feet or more when measured from the source property line between the hours of 7:00 a.m. and 10:00 p.m. daily.

2. A sketch or photograph of the location of the off-street parking spaces.

3. The days and times of trash pickup.

4. The notice of sea turtle nesting season and sea turtle lighting regulations, if applicable.

5. The location of the nearest hospital; and

6. The City's non-emergency police phone number.

7. There shall be posted, next to the interior door of each bedroom a legible copy of the building evacuation map – Minimum 8-1/2" by 11".

(f) Designation of a transient rental responsible party capable of meeting the duties provided in subsection 30-90.5.

(g) Advertising. Any advertising of the transient rental unit shall conform to information included in the Transient Rental Certificate of Compliance and the property's approval, particularly as this pertains to maximum occupancy. A statement stating "it is unlawful for a sexual offender or sexual predator to occupy this residence" if so determined pursuant to subsection 30-90.8.h of this code and the Certificate of Compliance number shall be included in all advertising.

(h) Sexual offenders and sexual predators. It is unlawful for any property owner or designated representative to allow another person to occupy any residential property as a Transient Rental within the City of Marco Island, as a Transient Occupant if such property owner or designated representative knew 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 the Marco Island Code of Ordinances, Section 18-200, if such place, structure, or part thereof, trailer or other conveyance, is located within one thousand four hundred (1,400) feet of any school, designated public school bus stop, child day care facility, park or playground or other place where children regularly congregate. Property owner or designated representative shall determine prior to submission of an application for a Certificate of Compliance whether the Transient Rental property is located in an area unlawful sexual offenders or sexual predators to occupy pursuant to section 18-200 of the Marco Island Code of Ordinances.

(c) Posting of Certificate of Compliance. The Certificate of Compliance shall be posted on the back of or next to the interior of the main entrance door and shall include at a minimum the name, address and phone number of the Responsible party, the maximum occupancy of the Transient Rental and a statement stating "it is unlawful for a sexual offender or sexual predator to occupy this residence" if so determined pursuant to subsection 30-90.8.h.

(d) That all overnight vehicles associated with the Transient Rental must be parked within a garage or on the subject Transient Rental driveway in compliance with the Code of Ordinances of the City of Marco Island.

(e) Other standards. Any other standards contained with the Code of Ordinances of the City of Marco Island to include, but not be limited to: Transient Rental noise, setbacks, stormwater and similar provisions.

(f) As a general policy, tenants and their guests are required to adhere to a "good neighbor" Code of Conduct Policy by which they will be respectful of their neighbors and not disrupt the peace and tranquility of their neighbors; not make raucous, loud, or unnecessary noise at any time; not allow drunken, disorderly, or intoxicated conduct on the short-term rental dwelling property; and not violate parking or occupancy restrictions. The owner shall provide a copy of the Code of Conduct "good neighbor" Policy to all tenants at the commencement of rental occupancy of a dwelling

9. Transient Rental Noise Control

Notwithstanding existing Noise Regulations contained in Article IV, Section 18, of the Marco Island Code of Ordinances, the use of a RSF property as a Transient Rental is a "public lodging" use of a home in a residential neighborhood. As such, a much stricter/quieter set of noise parameters must be defined for this application. For any RSF property being used as a Transient Rental, the Noise Regulations shall be defined as:

Any sound shall not be plainly audible for a period of one (1) minute or longer at a distance of twenty-five (25) feet or more when measured from the source property line between the hours

of 10:00 p.m. and 7:00 a.m. daily and at a distance of fifty (50) feet or more when measured from the source property line between the hours of 7:00 a.m. and 10:00 p.m., daily."

For all other Noise applications, Article IV of the Marco Island Code of Ordinances shall apply.

10. Expiration of Registration and Certificates of Compliance

(a) All registrations for which a certificate of compliance has been issued under the provisions of this Article shall be valid for no more than one year, and all registrations and certificates of compliance shall expire on September 30th of each year. The application for renewal must be submitted no later than sixty (60) days prior to the September 30th expiration date. Dates for renewal and applicable late renewal fees shall be established by resolution of the City Council of the City of Marco Island, or Designee, in accordance with Section 30-90.4.a.1 and shall be charged to an application for renewal submitted prior to the expiration date but after the sixty (60) days required by this section. All applications for renewal received after September 30 shall be processed as a new application and subject to all applicable fees.

11. Revocation, Penalties, Offenses, and Revocation

(a) Any Certificate of Rental Compliance issued pursuant to this Article may be denied, revoked, or suspended by the City Manager or his/her designee upon the adjudication of a violation of this Article, any City of Marco Island Ordinance, or State law by the Responsible party, property owner or Transient Occupant attributable to the property for which the Certificate of Compliance is issued. Such denial, revocation or suspension is in addition to any penalty provided herein.

(b) Offenses/violations.

(1) Non-compliance with any provisions of this Article shall constitute a violation of this Article.

(2) Separate violations. Each day a violation exists shall constitute a separate and distinct violation, except that occupancy violations of subsection 30-90.8.b. regarding occupancy and parking violations of subsection 30-90.3.a.5.a regarding parking shall constitute a single violation for a rental period.

(c) Remedies/enforcement.

(1) 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 transient rental program it is key that transient rental Responsible Parties are responsive and responsible in the management of the property for compliance with this section.

Any person, persons, STR owner, guilty of violating any of the provisions of this article shall be deemed guilty of a civil infraction. The amount of the civil penalty for the first uncontested violation shall be $200.00 and for the first contested violation the penalty shall be $275.00. Second violations shall be assessed $500.00 for an uncontested violation and $650.00 for a contested violation. Third violations shall be assessed $1000.00 for an uncontested violation and $1300.00 for a contested violation. These amounts are fixed fines, not subject to reduction by a Magistrate.

(2) Additional remedies. Nothing contained herein shall prevent the City of Marco Island from seeking all other available remedies which may include, but not be limited to, suspension or revocation of a Transient Rental Certificate of Compliance, injunctive relief, liens and other civil and criminal penalties as provided by law, as well as referral to other enforcing agencies.

(d) Suspension of Transient Rental Certificate of Compliance. In addition to any fines and any other remedies described herein or provided for by law, a special magistrate shall suspend a Transient Rental Certificate of Compliance in accordance with the following:

(1) Suspension time frames.

a. Upon a fourth violation of this Article the Transient Rental Certificate shall be suspended for a period of one hundred eighty (180) calendar days.

b. Upon a fifth violation of this Article the Transient Rental Certificate shall be suspended for a period of three hundred sixty-five (365) calendar days.

c. For each additional violation of this Article the Transient Rental Certificate shall be suspended for an additional thirty (30) calendar days up to a maximum period of twelve (12) months. For example, the sixth violation shall be for three hundred ninety-five (395) calendar days; the seventh violation shall be for four hundred fifteen (415) calendar days, and so on.

d A Transient Rental Certificate of Compliance shall be subject to temporary suspension beginning five (5) working days after a citation is issued for a violation of the Florida Building Code, or Florida Fire Prevention Code. Such suspension shall remain in place until the transient rental is reinspected and it is determined that the violation no longer exists by the City, in accordance with d.2, below.

(2) Suspension restrictions. A transient rental may not provide transient or long term rental occupancy during any period of suspension of a Transient Rental certificate.

a. The suspension shall begin immediately following notice, commencing either;

i. at the end of the current transient rental lease period; or

ii. within thirty (30) calendar days, whichever date commences earlier, or as otherwise determined by the Magistrate.

b. Operation during any period of suspension shall be deemed a violation pursuant to this article and shall be subject to daily fine, up to One thousand dollars ($1,000.00) or to the maximum amount as otherwise provided in Florida Statutes for repeat violations, for each day that the transient rental operates during a period of suspension.

c. An application for a renewal may be submitted during the period of suspension: however, no Certificate of Compliance may be issued for the transient rental until the period of suspension has expired.

d. A Transient Rental Certificate of Compliance cannot be reinstated from suspension if any fines, liens, fees are outstanding and due to the City of Marco Island.

e. In accordance with Section 30-90.2.a, any Transient Rental property where the Transient Rental Certificate of Compliance has been suspended, is not legally eligible to be advertised as a rental property. The City of Marco Island, or Designee, will notify agencies such as Airbnb, Craigs List and VRBO and local newspapers with regard to any suspensions (addresses and Certificate numbers). As a matter of information only, these agencies have agreed to not advertise properties that have suspended Certificates and/or are not legal rentals.

12. Complaints.

Whenever a violation of this Article occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof, shall be filed with the City Manager or his/her designee. The City Manager or his/her designee shall promptly record such complaint, investigate, and take action thereon in accordance with this article.

a. A Violation and/or complaint may also be filed by telephone directly to the City of Marco Island, or Designee, Rental Hotline. This number will be published, when operational, on the City website and via local newspapers. Operation of the Hotline will be determined by the City Manager and/or his or her Designee..

13. Enforcement

The provisions of this Article shall be enforced as provided in Section 14 - Code Enforcement, of the Code of Ordinances of the City of Marco Island, Florida.

14. Rental Registration Program Administration

The Marco Island City Council shall be responsible for the implementation and funding for the Program described in this Ordinance.

15. Rental Registration Program Subordination

Upon any determination that Short Term Rentals are illegal on Marco Island, this Ordinance shall not apply for any such illegal rental(s) and the illegal rental(s) shall cease to operate in accordance with the provisions herein.

However, in the event that any other rental in the RSF district that is not deemed illegal and that is defined by Florida State Statutes as a "Public Lodging Establishment" or any transient rental that is not a primary or principal residence of the renting party, any such rental shall be governed and regulated by this Ordinance.

In the event that the City of Marco Island determines that Short Term Transient Rentals are not allowed in RSF zoning, no new Transient Rental Compliance Certificates will be issued, and the Rental Registration Program will be discontinued as of 30 September of the year such rental ban is determined. Transient Rentals will be allowed, in accordance with Section 30-90 of the Marco Island Code of Ordinances until 30 September of the year of the Short Term Rental ban.

Section 3. All ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 4. This Ordinance shall become effective immediately upon its passage on second and final reading of the Marco Island City Council.

Section 5. The Ballot Title of this Ordinance is "Rental Registration Program for RSF Properties in the City of Marco Island"

Section 6. In accordance with Florida Statute 106.161(1), the Ballot Summary (for Ballot use only) is provided for the subject Ordinance as "Shall the City of Marco Island enact an Ordinance adding to the Land Development Code of the Code of Ordinances, in Article II, Zoning, Section 30-90, creating a self-financed Transient (Vacation) RSF Rental Registration Program; creating definitions; conditions requiring registration and application requirements; defining requirements and qualification for Responsible Party; rental standards and inspections; renewal process; violation penalties including fines and/or the suspension of Registration Compliance Certificate"

Yes ( )

NO ( )

INITIATIVE INFORMATION: PAGE 16 OF 17

PASSED AND ADOPTED in regular session on second and final reading on this _____ day of 2022.

ATTEST:

City Clerk _____

First Reading_____

Second Reading_____

Approved as to form and legal sufficiency: _____

INITIATIVE INFORMATION: PAGE 17 OF 17

~~Marco Island Ordinance titled "Implement a Single Family Home Transient Rental Registration Program including rules, inspections, penalties, and suspensions"~~
~~CITY ATTORNEY REDLINED 10.7.22 9.25.22~~

CITY OF MARCO ISLAND

ORDINANCE NO. 22-XX

AN ORDINANCE OF THE CITY ~~COUNCIL OF THE CITY~~ OF MARCO ISLAND, FLORIDA, ~~ADDING~~ AMENDING CHAPTER 30 ~~OF THE CITY'S~~ TO THE LAND DEVELOPMENT ~~CODE OF THE CODE OF ORDINANCES~~, ~~IN~~ ARTICLE II, "ZONING", OF THE CITY OF MARCO ISLAND CODE OF ORDINANCES BY CREATING A NEW SECTION 30-90, ~~CREATING~~ TO ESTABLISH A SELF-FINANCED, TRANSIENT SINGLE-FAMILY HOME (RSF) RENTAL REGISTRATION PROGRAM; WITH ~~CREATING~~ DEFINED TERMS; CONDITIONS REQUIRING TRANSIENT, SINGLE-FAMILY HOME RENTAL REGISTRATION AND APPLICATION REQUIREMENTS; CREATING TRANSIENT RENTAL REGISTRATION PROCESS; DEFINING THE QUALIFICATION OF AND REQUIREMENTS FOR A RESPONSIBLE PARTY; TRANSIENT RENTAL STANDARDS/RULES AND INSPECTIONS; THE PROCESS FOR RENEWAL OF REGISTRATION AND PENALTIES RESULTING IN FINES AND/OR THE SUSPENSION OF THE CERTIFICATE OF RENTAL COMPLIANCE; ~~AND~~ PROVIDING FOR SEVERABILITY/INTERPRETATION; PROVIDING A CONFLICTS CLAUSE~~;~~, PROVIDING A SEVERABILITY CLAUSE~~;~~, PROVIDING AUTHORITY TO CODIFY; AND, PROVIDING AN EFFECTIVE DATE~~; AND FOR OTHER PURPOSES~~.

WHEREAS on August 23, 2022, the voters of the City of Marco Island (the "City") voted in favor of a referendum to implement a transient rental registration program in residential single family (RSF) districts pursuant to the ordinance referenced in the referendum (the "Ordinance"). The Ordinance as presented to and approved by Marco registered voters is attached hereto as Exhibit "A"; and

WHEREAS, as provided in the Ordinance, and pursuant to the City of Marco Island Charter, once approved by the City's electors, the Ordinance shall become effective upon its passage following second and final reading by the City Council; and

WHEREAS, in order to ensure conformance with the City's existing Code of Ordinances and Land Development Code, there are revisions necessary to be made to the Ordinance. A copy of the Ordinance with the necessary revisions is attached hereto as Exhibit "B" to this Ordinance; and

WHEREAS, the transient rental registration program provisions, as codified in Section 2 of this Ordinance are hereby adopted by the City of Marco Island City Council pursuant to the City Council's legal obligation following the August 23, 2022 referendum; and

WHEREAS, the City of Marco Island's Land Development Code needs to be updated and revised to "Create a Rental Registration Program for RSF Zoned properties; and

EXHIBIT B

WHEREAS, the City Council of the City of Marco Island, Florida, finds the enclosed ordinance is consistent with the latest version of the Marco Island Comprehensive Plan; and.

WHEREAS, the City Council of the City of Marco Island has determined that the proposed revisions to the Land Development Code are in the best interests of the general health, safety, and welfare of the residents and businesses of the City of Marco Island.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA, that:

SECTION 1. Recitals. The above recitals are true and correct and are hereby incorporated into this Ordinance as if fully restated herein.

SECTION 2. Amendment and Adoption. Chapter 30 "Land Development Code," Article II "Zoning" ~~Section 30-90, of the Land Development Code~~ of the Code of Ordinances of the City of Marco Island, Florida, be, and the same are hereby amended by enacting a new~~to create~~ Section 30-90 ~~shall be created and~~ entitled "Rental Registration Program," to provide as follows:~~and shall hereby include the following:~~[1]

CHAPTER 30 – LAND DEVELOPMENT CODE

****

ARTICLE II. – ZONING

****

Sec. 30-90. – Rental Registration Program

~~:~~

~~**Section 30-90**~~

30-90.1. Definitions

(a) "Certificate of Transient Rental Compliance" means the document that is issued by the City that bears the words "Transient Rental Certificate of Compliance" and evidences that the person or entity, in whose name the document is issued, has complied with the provisions of this ~~Article~~ ~~Ordinance~~Section relating to transient rentals.

(b) "Garbage" which is ~~(~~included in the definition of~~as~~ "Litter,"~~)~~ as defined in Section 18-32 of the City of Marco Island Code of Ordinances.

[1] Additions to existing city code text are shown by underline; deletions from existing city code text are shown by ~~strikethrough~~. Text in yellow highlight represents revisions to approved Ordinance made by referendum Committee.

(c) "Noise" is defined as any sounds emanating from the Transient Public Lodging Establishment that can be heard from any adjacent or non-adjacent property. This includes, but is not limited to, human sounds, animal sounds, electronically generated sounds, mechanically generated sounds, musically generated sounds, or any other sounds that would not be heard if the Transient Public Lodging Establishment were not occupied. Any other sounds not applicable in this ~~Ordinance~~Section shall be subject to Sections 18-104 and 18-105 of the City of Marco Island Code of Ordinances.

(d). "Residential property" as used as a Transient Rental under this ~~ordinance~~Section shall be defined as a single family home public lodging establishment. See definition of Vacation Rental/Transient Rental below.~~as defined in Chapter 30, Division 2 of the Marco Island Code of Ordinances~~

(e). "Responsible ~~party~~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 the property and the conduct and acts of transient occupants of residential properties. The Responsible Party shall be able to physically respond to the property within 1 (one) hour after notification.

(f) "Sleeping Room" shall mean a room or space within a dwelling unit, primarily designed and used or intended to be used for sleeping purposes, excluding ~~living rooms, family rooms~~, kitchens, bathrooms, shower rooms, water closet compartments, laundries, pantries, foyers, connecting corridors, garages, closets and storage space. Living rooms and/or family rooms may be utilized for sleeping if, and only if, permanent sleeping furniture is provided such as a sleeper sofa. ~~A couch/sofa and/or pull-out couch/sofa can be used for occupants 13-18 years and under, as cited in 30.90.8.b.1.c.~~

(g). "Transient Occupants" means any person, or guest or invitee of such person, who occupies or is in actual or apparent control or possession of residential property for a period of less than 30 days, registered as required pursuant to this ~~Article~~ Section ~~Ordinance to be registered as, a Transient 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 Transient Rental is a Transient Occupant. ~~As used in this Ordinance, a tenant, or group of tenants, are defined as transient occupant(s) or guests.~~

(h) "Vacation Rental/Transient Rental". Section 509.013(4)(a), Florida Statutes~~State Statute 509.103~~ defines ~~Vacation Rentals and Transient Public Lodging Establishments~~Rentals as follows: ~~Paragraph (4)(a)~~ "Public lodging establishment" includes a transient public lodging establishment as defined in subparagraph (ia).

(ia) "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.

(ii) b) The definition contained in subsection (ia) shall apply to any individually or collectively owned RSF zoned single-family home, irrespective of the number of bedrooms, that is rented to Transient Occupants (guests) more than three (3) times in a calendar year for periods of less than thirty (30) days, or which is advertised or held out to the public as a place regularly rented to Transient Occupants.

(i) "Tenant," "Tenants," or "Group of Tenants" are defined as transient occupant(s) or guests.

~~shall mean any individually or collectively owned RSF zoned single family home, irrespective of the number of bedrooms, that is rented to Transient Occupants more than three (3) times in a calendar year for periods of less than thirty (30) days, or which is advertised or held out to the public as a place regularly rented to Transient Occupants.~~

30-90.2. Registration Required

(a) It is unlawful for any person to allow another person to occupy any residential property that is a single-family, RSF zoned, house or dwelling unit as a Transient Rental within the City of Marco Island, or offer such property for rent as a Transient Rental within the City of Marco Island, unless the person has registered the property as a Transient Rental property with the City of Marco Island, or Designee, and the Transient Rental property has been issued a Certificate of Transient Rental Compliance in accordance with the provisions of this ~~Article~~ OrdinanceSection.

(b) An application for registration as a Transient Rental is deemed pending when the application has been filed, all applicable fees have been paid to the City pursuant to Section 30-90.3, Code of Ordinances of the City of Marco Island, Florida, a Certificate of Transient Rental Compliance has not been issued for the property and the application has not been rejected. A registration application rejected as incomplete is not pending. Notwithstanding subsection (a) above, a person may allow another person to occupy a residential property, for which a Certificate of Transient Rental Compliance has not been issued, as a Transient Rental, when an application is pending if:

(1) The residential property has an effective and valid license as a Transient Rental classification of public lodging establishment issued by the Florida Department of Business and Professional Regulations prior to November 1, 2022; and

(2) The residential property is not in violation of any section of the Code of Ordinances of the City of Marco Island; and

(3) An application for registration of the residential property as a Transient Rental has been filed pursuant to Section 30-90.3 and all applicable fees have been paid; and

(4) That said occupancy of the Transient Rental was scheduled prior to ~~August 15, 2022~~ November 1, 2022, as evidenced by a written and validly executed ~~rental~~ transient occupancy agreement or contract provided to the City Manager, or his/her Designee, no later than November 15, 2022.

(5) The residential property has no fines or liens, payable to the City of Marco Island, outstanding at the time of Application.

(6) Transient Rental shall be registered annually on or before September 30th ~~the thirtieth (30th) day of September.~~

30-90.3. Application for Transient Rental Registration

(a) A separate application for registration of a Transient Rental shall be made to the City Manager or his/her designee for each dwelling unit, as the term is defined in Section 30-90.1 of the City of Marco Island, Florida, Land Development Code, proposed for use as a Transient Rental and shall set forth at a minimum:

(1i) The legal description of the property offered for rental (i.e., address, lot, block and subdivision name);

(2ii) Name, address, electronic mail address, and phone number of owner of said property; Name, address, electronic mail address, and emergency contact phone number of Responsible Party for said property, which shall be a twenty-four (24) hour, seven (7) days a week contact phone number.

(3iii) That the phone number for the Responsible party will be answered twenty-four (24) hours a day, seven (7) days a week by the Responsible Party.

(4iv) Acknowledgements by owner of the following:

a. That all overnight vehicles associated with the Transient Rental must be parked within a driveway located on the subject property and said driveway is constructed in compliance with the Code of Ordinances of the City of Marco Island.

b. That it shall be unlawful to allow or make any noise or sound that exceeds the limits set forth in Section 30-90.9, Transient Rental Noise Control.

c. That the owner shall comply with all applicable City, County, State and Federal laws, rules, Regulations, Ordinances and Statutes.

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 solid waste container shall be removed before 6:00 pm ~~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.

f. That other properties are not jointly shared commodities and should not be considered available for use by transient occupants of the property subject of the application; and

(5v) Proof of owner's current ownership of the property;

(6vi) Proof of registration with the Florida Department of Revenue for sales tax collection (for Collier County Sales Tax); and

(7vii) Proof of licensure with the Florida Department of Business and Professional Regulation for a transient public lodging establishment.

~~(8)~~ (8viii) Minimum Insurance Requirements: Every short-term rental property licensed pursuant to this Section shall continuously maintain liability insurance appropriate to cover the short-term rental use, including any necessary policy

endorsements, with a minimum of at least $1 million or solely conduct each short-term rental transaction through a platform that provides equal or greater liability insurance coverage to cover the short-term rental use. Evidence of Insurance: Every applicant shall tender to the City of Marco Island, or Designee, the certificates of insurance certifying that insurance of the types and in the amounts required by this chapter are in full force and effect at all times; and

~~(9)~~ ~~(9ix)~~ Proof of compliance with Subsection 30-90.8

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

b. An application for the modification of a Transient Rental registration is required when any of the following changes to the Transient Rental are proposed:

(1) A change in the gross square footage.

(2) A change in the number of bedrooms.

(3) A change in the maximum occupancy.

(4) A change in the number of parking spaces, or a change in the location of parking spaces.

(10) Upon completion of the changes or alterations to the Transient Rental property or the Transient Rental operation the owner shall notify the City, or Designee, within ten (10) days of completion. A new certificate of compliance may be issued if the conditions of Section 30-90.3.a have been met and all required permits have been issued for the changes or alterations.

30-90.4. Fee and Costs for Registration

(a) The City of Marco Island shall charge a ~~fee for~~ Transient Rental Registration Administrative Fee. The Marco Island City Council, upon adoption of this Ordinance, will determine the amount of the Fee, per year, together with a consideration as to whether this fee is refundable or nonrefundable. The Marco Island City Council shall determine the funding method for the Registration Program, and adopt the fee by Resolution. ~~It should be noted that the State of Florida is considering a maximum Registration Fee of $50 (fifty dollars) per year for all Rental Registrations.~~

(1.) ~~In addition to the yearly Registration Fee, every Applicant of a Rental Compliance Certificate shall be assessed a non-refundable Program Cost Administration Fee.~~ This annually-imposed Fee is subject to yearly adjustment and will be calculated as the total cost of the Program, including Administrative and Enforcement costs, divided by the number of Transient Rental Homes. This Fee will include the cost of the yearly Fire Inspection fee. Each Fiscal year, the City Manager, Director of Finance and any other Designated Personnel, will determine the new Program Cost Administration Fee that will be adjusted to reflect any shortage or overage for the new Fiscal year. It is the intention

of the Program to be administered to not generate a profit or loss for the Program. The Marco Island City Council shall determine all funding aspects of the Program~~, in coordination with the Director of Finance~~.

~~(~~2.~~)~~ The first year ~~Program Cost~~ Administration Fee, shall be determined by the Marco Island City Council, and shall be assessed on per Transient Rental Home basis.

(b) No Registration can be completed if a home has outstanding fees, fines or liens owed to the City of Marco Island for any reason(s). Proof of payment of any outstanding fees, fines or liens shall be submitted prior to the issuance of any Certificate of Transient Rental Compliance.

30-90.5. Responsible ~~party~~ Party ~~required~~Required.

Whenever any property is required to be registered under this ~~Article Ordinance~~Section, the owner shall appoint a natural person 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 of notice to the owner. An initial Responsible Party shall be designated, and name submitted with the application for registration, and the City Manager or his/her designee shall thereafter be notified of any change of Responsible Party within ten (10) days of such change. Further, it is the affirmative duty of the Responsible Party to:

(a) Provide all guests prior to occupancy of the property with a written summary, printed in the English and Spanish language, of applicable City of Marco Island Ordinances concerning noise, vehicle parking, garbage, and common area usage. The summary shall include citations to the applicable City of Marco Island Ordinances and instructions on how to access the complete written text. The summary shall be posted in the interior of the structure, prominently near the main entrance of the establishment.

(b) Maintain all properties under their control in compliance with the Code of Ordinances of the City of Marco Island, Florida.

(c) See that the provisions of this ~~Article Ordinance~~Section are complied with and promptly address any violations of this ~~Article Ordinance~~Section or any violations of law which may come to the attention of the Responsible Party.

(d) Be available with authority to address and coordinate solutions to problems with the transient rental of the property twenty-four (24) hours a day, seven (7) days a week.

(e) Be situated close enough to the property as to be able to respond in person within one (1) hour of being notified by a Transient Rental occupant, law enforcement officer, a City Manager designated Rental Compliance Officer/employee, emergency personnel, or the City, of issues related to the Transient Rental. Responsible party shall respond when requested.

(f) Keep available a register of all current guests, only, which shall be available for inspection by authorized personnel of the City of Marco Island at all times.

(g) Maintain, or arrange for the maintenance, of the entire property free of garbage and litter, provided however, that this subsection shall not prohibit the storage of garbage and litter in authorized receptacles for collection.

(h) Conduct an on-site inspection of the Transient Rental at the end of each rental period to assure continued compliance with the requirements of this ~~ordinance~~ OrdinanceSection and any applicable state regulations ~~chapter~~.

30-90.6 False ~~information~~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~~ OrdinanceSection. Transient Rental applications shall be sworn to under penalty of perjury. Any owner of any Transient Rental who engages in fraudulent advertising or activity shall be considered as engaging in a violation of this ~~Ordinance~~Section. ~~Any false statements made in an application shall be a basis for the revocation of any license issued pursuant to such application.~~

30-90.7 Minimum Requirements for Issuance of a Certificate of Compliance.

The City Manager or his/her designee may issue a Certificate of Compliance to the applicant upon proof of the following:

(a) The owner or Responsible party completes the City of Marco Island –Transient Rental registration application form.

(b) The ~~non-refundable~~ Transient Rental Registration Administrative Fee has been paid to the City of Marco Island.

(c) A signed and witnessed ~~Notarized~~ Responsible Party Authorization Letter (sample provided with Transient Rental Application Form). The Letter will be signed by both the Owner and Responsible Party and both signatures will be witnessed ~~Notarized~~.

(d) A Florida Department of Revenue certificate of registration for purposes of collecting and remitting tourist development taxes, sales surtaxes and/or transient rental taxes.

(e) A Florida Department of Business and Professional Regulation license as a transient public lodging establishment.

(f) An affidavit, demonstrating maintaining initial and on-going compliance with Transient 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, as may be amended from time to time ; and

(g) A copy of the form Transient ~~rental/lease~~ Occupancy agreement to be used when contracting with Transient Occupants ~~/ and guests~~.

(h) That the Transient Rental has satisfied the fire safety inspection requirements, annually, as provided in Section 30-90.8, of the Code of Ordinances of the City of Marco Island.

(h) Submission of the insurance document(s) referenced in Section 30-90.3~~30.90.3.a.8~~9.

(i) That the Transient rental is not subject to a suspension pursuant to Section 30-90.11.

30-90.8. Transient Rental Standards.

The following standards shall govern the use of any transient rental as a permitted use:

(a) Minimum life/safety requirements:

1. Swimming pool, spa and hot tub safety. A swimming pool, spa or hot tub shall comply with the current standards of the "Residential Swimming Pool Safety Act," Chapter 515, Florida Statutes, as may be amended from time to time.

2. Dwelling Units. All dwelling units shall meet the single-family dwelling minimum requirements of Sections 30-81~~01~~ through 30-89~~07 Article VI. Minimum Housing Code, Chapter 9, Buildings and Construction~~ and Section 30-10, Definitions of a Dwelling, Single Family or One Family ofwithin the Code of Ordinances of the City of Marco Island, Florida, as may be amended from time to time.

3. Smoke and carbon monoxide (CO) detection and notification system. A smoke and carbon monoxide (CO) detection and notification system within the transient rental unit shall be installed, operational and interconnected/hard-wired and receive primary power from the building wiring. The smoke and carbon monoxide (CO) detection and notification system will be continually maintained and tested consistent with the requirements of Section R314, Smoke Alarms, and Section R315, Carbon Monoxide Alarms, of the Florida Building Code – Residential.

4. 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 location.

5. That all overnight vehicles associated with the Transient Rental must be parked within a garage and/or on a driveway located on the subject property and in compliance with the Code of Ordinances of the City of Marco Island.

6. Local phone service. At least one landline telephone with the ability to call 911 shall be available in the main level common area in the Transient Rental.

7. Included in the yearly Registration Fee described in Section 30-90.4 is the cost of a Marco Island Fire Department~~,~~ Fire Safety inspection. This inspection shall be conducted by a City of Marco Island Licensed Fire Inspector and shall be

completed in accordance with any applicable state and local fire safety regulations. This inspection, and any required corrections/modifications must be completed prior to the issuance of a Transient Rental Certificate of Compliance.

~~Also required on a yearly basis, is a safety inspection by a City of Marco Island Designated/Authorized Inspector. This inspection, and any required corrections/modifications must be completed prior to the issuance of a Transient Rental Certificate of Compliance.~~

(b) Maximum occupancy. The occupancy of a Transient Rental shall not exceed:

1. Two (2) persons per Sleeping (Bedroom) Room. The number of Bedrooms ~~is reflected~~ shall match the building plans or records if no plans exist ~~records of the Collier County Property Appraiser's Office (via cross referencing Building Permit look up)~~ and shall be used in determining the number of Sleeping Rooms at the Transient Rental. Any advertisement or hold out for rental of the transient property must reflect and match the number of Bedrooms on record with the City of Marco Island Building Department or Collier County.

2. The maximum number of persons allowed to gather at a Transient Rental shall not exceed one and one-half times the maximum ~~ADULT~~ occupants authorized to stay overnight at that site, as shown on the Certificate of Compliance, and in no event shall a gathering exceed 20 persons. After 10 pm, the number of occupants shall not exceed the maximum occupancy described in 30-90.8-(b)1, above plus a maximum of two (2) additional persons. ~~4 persons under the age of 13 years.~~ By way of example only, the maximum number of occupants past 10 pm in a three-bedroom house is eight (8).

This subsection ~~a.~~ shall not apply to owner-occupied Transient Rentals when the property owner is physically present on the site during the gathering.

3. Up to ~~four (4)~~ two (2) persons ~~under 13 years of age~~ are exempt from and shall not count towards the occupancy limits set in subsections 8(b)2~~1a. and b.~~ above.

(c) Solid waste handling and containment. City solid waste containers shall be provided ~~as required~~. Appropriate screening and storage requirements for solid waste containers shall apply per any development approval. 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.

(d) Minimum transient ~~rental/lease occupancy~~ agreement wording. The transient ~~rental/lease occupancy~~ agreement shall contain the minimum information as provided for in ~~this~~ subsections 30-90.8 (b), (d~~e~~), and (e). The transient occupant responsible for all guests and occupancy payments will sign the transient occupancy agreement

acknowledging the rules. The wording of such an agreement shall contain a clause indicating that the occupant(s) acknowledge the rules and will agree to vacate the premises in the event of a violation of this ~~Ordinance~~Section upon request by the Owner or Responsible Party and whereas any such vacation shall occur not more than 12 hours upon such request.

~~(d)~~(e) Minimum transient ~~rental lessee occupancy~~ information. The transient rental ~~lessee~~ occupants shall be provided with a summary of the information required in the agreement described in subsection 30-90.8-(d) with instructions on how to access the full text and the Owner shall post the following conspicuously within the establishment:

1. A statement advising the Occupant that any sound shall not be plainly audible for a period of one (1) minute or longer at a distance of twenty-five (25) feet or more when measured from the source property line between the hours of 10:00 p.m. and 7:00 a.m. daily and at a distance of fifty (50) feet or more when measured from the source property line between the hours of 7:00 a.m. and 10:00 p.m. daily.

2. The parking restrictions for occupant vehicles

3. Any applicable boat storage and docking regulations and restrictions

4. A sketch or photograph of the location of the off-street parking spaces.

5. The days and times of trash pickup.

6. The notice of sea turtle nesting season and sea turtle lighting regulations, if applicable.

7. The location of the nearest hospital; and

8. The City's non-emergency police phone number.

9. There shall be posted, in a conspicuous location ~~next to the interior door of each bedroom~~ a legible copy of the building evacuation map – Minimum 8-1/2" by 11".

(f) Designation of a transient rental responsible party capable of meeting the duties provided in subsection 30-90.5.

(g) Advertising. Any advertising of the transient rental unit shall conform to information included in the Transient Rental Certificate of Compliance and the property's approval, particularly as this pertains to maximum occupancy. A statement stating "It is unlawful for a sexual offender or sexual predator to occupy this residence" if so determined pursuant to subsection 30-90.8.h of this code and the Certificate of Compliance number shall be included in all advertising.

(h) Sexual offenders and sexual predators. It is unlawful for any property owner or designated representative to allow another person to occupy any residential property as a Transient Rental within the City of Marco Island, as a Transient Occupant if such property owner or designated representative knew 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 the Marco Island Code of Ordinances, Section 18-200, if such place, structure; or part thereof, trailer or other conveyance, is located within two thousand five hundred feet~~one thousand four hundred~~ (~~1,400~~2,500')~~feet~~ of any school, designated public school bus stop, child day care facility, park or playground or other place where children regularly congregate. Property owner or designated representative shall determine prior to submission of an application for a Certificate of Compliance whether the Transient Rental property is located in an area unlawful sexual offenders or sexual predators to occupy pursuant to section 18-200 of the Marco Island Code of Ordinances.

(i) Posting of Certificate of Compliance. The Certificate of Compliance shall be posted on the back of or next to the interior of the main entrance door and shall include at a minimum the name, address and phone number of the Responsible party, the maximum occupancy of the Transient Rental and a statement stating "it is unlawful for a sexual offender or sexual predator to occupy this residence" if so determined pursuant to subsection 30-90.8.h.

(j) That all overnight vehicles associated with the Transient Rental must be parked within a garage or on the subject Transient Rental driveway in compliance with the Code of Ordinances of the City of Marco Island.

(k) Other standards. Any other standards contained with the Code of Ordinances of the City of Marco Island to include, but not be limited to: Transient Rental noise, setbacks, stormwater and similar provisions.

~~As a general policy, tenants and their guests are required to adhere to a "good neighbor" Code of Conduct Policy by which they will be respectful of their neighbors and not disrupt the peace and tranquility of their neighbors; not make raucous, loud, or unnecessary noise at any time; not allow drunken, disorderly, or intoxicated conduct on the short term rental dwelling property; and not violate parking or occupancy restrictions. The owner shall provide a copy of the Code of Conduct "good neighbor" Policy to all tenants at the commencement of rental occupancy of a dwelling~~

30-90.9. Transient Rental Noise Control

(a) Notwithstanding existing Noise Regulations contained in Article IV, Section 18, of the Marco Island Code of Ordinances, the use of a RSF property as a Transient Rental is a "public lodging" use of a home in a residential neighborhood. As such, a much

stricter/quieter set of noise parameters must be defined for this application. For any RSF property being used as a Transient Rental, the Noise Regulations shall be defined as:

(b) Any sound shall not be plainly audible for a period of one (1) minute or longer at a distance of twenty-five (25) feet or more when measured from the source property line between the hours of 10:00 p.m. and 7:00 a.m. daily and at a distance of fifty (50) feet or more when measured from the source property line between the hours of 7:00 a.m. and 10:00 p.m., daily."

(c) For all other Noise applications, Article IV of the Marco Island Code of Ordinances shall apply.

30-90.10Expiration of Registration and Certificates of Compliance

(a) All registrations for which a certificate of compliance has been issued under the provisions of this ~~Article~~ OrdinanceSection shall be valid for no more than one year, and all registrations and certificates of compliance shall expire on September 30th of each year. The application for renewal must be submitted no later than sixty (60) days prior to the September 30th expiration date. Dates for renewal and applicable late renewal fees shall be established by resolution of the City Council of the City of Marco Island, or Designee, in accordance with Section 30-90.4.~~a.1~~ and shall be charged to an application for renewal submitted prior to the expiration date but after the sixty (60) days required by this section. All applications for renewal received after September 30 shall be processed as a new application and subject to all applicable fees.

~~Revocation.~~ 30-90.11Penalties and Offenses~~, and Revocation~~

(a) Any Certificate of Rental Compliance issued pursuant to this ~~Article~~ OrdinanceSection may be ~~denied, revoked,~~ or suspended by the Magistrate pursuant to~~per~~ Section 11(d) of this ~~Ordinance~~Section. ~~City Manager or his/her designee upon the adjudication of a violation of this Article Ordinance, any City of Marco Island Ordinance, or State law by the Responsible party, property owner or Transient Occupant attributable to the property for which the Certificate of Compliance is issued.~~ Such ~~denial, revocation or~~ suspension is in addition to any penalty provided herein.

~~(a)~~(b) Offenses/violations.

(1) Non-compliance with any provisions of this ~~Article Ordinance~~Section shall constitute a violation of this ~~Article Ordinance~~Section.

(2) Separate violations. Each day a violation exists shall constitute a separate and distinct violation, except that occupancy violations of subsection 30-90.8.b. regarding occupancy and parking violations of subsection 30-90.3.a.5.a regarding parking shall constitute a single violation for a rental period.

(c) Remedies/enforcement.

(1) Violations of this ~~Article Ordinance~~Section 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 transient rental program it is key that transient rental Responsible

Parties are responsive and responsible in the management of the property for compliance with this section.

Any person, persons, ~~STR~~ Transient Rental owner, guilty of violating any of the provisions of this ~~Ordinance~~Section shall be deemed guilty of a civil infraction. The amount of the civil penalty may be up to $250.00 for the first violation, up to $500.00 for the second violation within a 24 month period, up to $1,000.00 for the third violation within a 24 month period, up to $2,000.00 for the fourth violation within a 24 month period, up to $4,000.00 for the fifth violation within a 24 month period, and up to $5,000.00 for the sixth and any subsequent violations within a 24 month period. ~~for the first uncontested violation shall be $200.00 and for the first contested violation the penalty shall be $275.00. Second violations shall be assessed $500.00 for an uncontested violation and $650.00 for a contested violation. Third violations shall be assessed $1000.00 for an uncontested violation and $1300.00 for a contested violation. These amounts are fixed fines, not subject to reduction by a Magistrate.~~

(2) Any person who operates a Transient Rental and fails to register as required in Sections 3 and 4 of this ~~Ordinance~~Section shall be subject to a daily fine of $1,000.00 for each day the Transient Rental is operated without a valid Transient Rental Certificate of Compliance.

~~(2)~~ (3) Additional remedies. Nothing contained herein shall prevent the City of Marco Island from seeking all other available remedies which may include, but not be limited to, suspension ~~or revocation~~ of a Transient Rental Certificate of Compliance, injunctive relief, liens and other civil and criminal penalties as provided by law, as well as referral to other enforcing agencies.

(d) Suspension of Transient Rental Certificate of Compliance. In addition to any fines and any other remedies described herein or provided for by law, a ~~special~~ magistrate shall suspend a Transient Rental Certificate of Compliance in accordance with the following:

(1) Suspension time frames.

a. Upon a fourth violation of this ~~Article Ordinance~~Section within 24 months the Transient Rental Certificate ~~shall~~ may be suspended for a period of up to one hundred eighty (180) calendar days at the discretion of the magistrate.

b. Upon a fifth violation of this ~~Article Ordinance~~Section within 24 months the Transient Rental Certificate ~~shall~~ may be suspended for a period of up to three hundred sixty-five (365) calendar days at the discretion of the magistrate.

c. For each additional violation of this ~~Article Ordinance~~Section within 24 months the Transient Rental Certificate ~~shall~~ may be suspended for a period of up to an additional thirty (30) calendar days at the discretion of the magistrate, up to a maximum period of twelve (12) months. For example, the sixth violation shall be for three hundred ninety-five (395)

calendar days; the seventh violation shall be for four hundred fifteen (415) calendar days, and so on.

d. A Transient Rental Certificate of Compliance shall be subject to temporary suspension beginning five (5) working days after a citation is issued for a violation of the Florida Building Code, or Florida Fire Prevention Code. Such suspension shall remain in place until the transient rental is reinspected and it is determined that the violation no longer exists by the City, in accordance with d.2, below.

(2) Suspension restrictions. A transient rental may not provide transient ~~or long term~~ rental occupancy during any period of suspension of a Transient Rental certificate. This provision shall not prevent a Transient Rental owner from exercising a long-term rental (any rental 30 continuous days or more) during a suspension period. However, in the event a transient occupant does not occupy the Transient Rental for at least 30 continuous days, the Transient Rental owner cannot initiate a new rental lease until the full 30-day period has elapsed. A Transient Rental that enables and executes Transient Rental occupancy for any period less than 30 continuous days during a suspension period shall be considered to be in violation of this ~~Ordinance~~Section and shall be subject to the enforcement penalties of this section.

a. The suspension shall begin immediately following notice, commencing either;

i. at the end of the current transient rental lease period; or

ii. within thirty (30) calendar days, whichever date commences earlier, or as otherwise determined by the Magistrate.

b. Operation during any period of suspension shall be deemed a violation pursuant to this ~~Ordinance~~Section and shall be subject to daily fine, up to One ~~t~~Thousand ~~d~~Dollars ($1,000.00) or to the maximum amount as otherwise provided in Florida Statutes for repeat violations, for each day that the transient rental operates during a period of suspension.

c. An application for a renewal may be submitted during the period of suspension: however, no Certificate of Compliance may be issued for the transient rental until the period of suspension has expired.

d. A Transient Rental Certificate of Compliance cannot be reinstated from suspension if any fines, liens, fees are outstanding and due to the City of Marco Island.

e. In accordance with Section 30-90.2.a, any Transient Rental property where the Transient Rental Certificate of Compliance has been suspended, is not legally eligible to be advertised as a short-term rental property during the period of suspension. The City of Marco Island, or Designee, will notify the Responsible Party with regard to a suspension. ~~agencies such as Airbnb, Craigs List and VRBO and local newspapers with regard to any suspensions (addresses and Certificate numbers). As a matter of information only, these agencies have agreed to not advertise properties that have suspended Certificates and/or are not legal rentals.~~

30-90.12 Complaints.

(a) Whenever a violation of this ~~Ordinance~~Section occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof, shall be filed with the City Manager or his/her designee. The City Manager or his/her designee shall promptly record such complaint, investigate, and take action thereon in accordance with this ~~Ordinance~~Section.

(b) ~~a.~~ A Violation and/or complaint may also be filed by telephone directly to the City of Marco Island, or Designee, Rental Hotline. This number will be published, when operational, on the City website and via local newspapers. Operation of the Hotline will be determined by the City Manager and/or his or her Designee..

30-90.13 Enforcement.

The provisions of this ~~Ordinance~~Section shall be enforced as provided in Section 14 - Code Enforcement, of the Code of Ordinances of the City of Marco Island, Florida.

30-90.14 Rental Registration Program Administration.

The Marco Island City Council shall be responsible for the implementation and funding for the Program described in this Ordinance.

30-90.15 Rental Registration Program Subordination.

(a) Upon any determination that Short Term Rentals are illegal on Marco Island, this ~~Ordinance~~Section shall not apply for any such illegal rental(s) and the illegal rental(s) shall cease to operate in accordance with the provisions herein.

(b) However, in the event that any other rental in the RSF district that is not deemed illegal and that is defined by Florida State Statutes as a "Public Lodging Establishment" or any transient rental that is not a primary or principal residence of the renting party, any such rental shall be governed and regulated by this ~~Ordinance~~Section.

(c) In the event that the City of Marco Island determines that Short Term Transient Rentals are not allowed in RSF zoning, no new Transient Rental Compliance Certificates will be issued, and the Rental Registration Program will be discontinued as of September 30th ~~September~~ of the year such rental ban is determined. Transient Rentals will be allowed, in accordance with Section 30-90 of the Marco Island Code of Ordinances until September 30th ~~September~~ of the year of the Short Term Rental ban.

SECTION 3. Severability / Interpretation.

(a) If any term, section, clause, sentence or phrase of this Ordinance is for any reason held to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the other remaining terms, section, clauses, sentences, or phrases or portions of this Ordinance, and this Ordinances 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 this Ordinance, underlined words indicate additions to existing text, and ~~stricken through~~ words include deletions from existing text. Asterisks (****) indicate a deletion from the Ordinance of text, which continues to exist 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 4. Conflicts. All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict with the provisions of this Ordinance are hereby superseded and resolved to the extent of any conflict in favor of the provisions of this Ordinance. ~~All ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.~~

SECTION 5. Codification. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the City Code of the City of Marco Island, and that the sections of this Ordinance may be renumbered to accomplish such intent.

SECTION ~~6~~ 4. Effective Date. This ~~ordinance~~ Ordinance shall take effect immediately upon its passage on second and final reading of the Marco Island City Council.

~~SECTION 7 5. The Ballot Title of this Ordinance is "Rental Registration Program for RSF Properties in the City of Marco Island"~~

~~Section 6. In accordance with Florida Statute 1016.161(1), the Ballot Summary (for Ballot use only) is provided for the subject Ordinance as "Shall the City of Marco Island enact an Ordinance adding to the Land Development Code of the Code of Ordinances, in Article II, Zoning, Section 30-90, creating a self financed Transient (Vacation) RSF Rental Registration Program; creating definitions; conditions requiring registration and application requirements; defining requirements and qualification for Responsible Party; rental standards and Inspections; renewal process; violation penalties including fines and/or the suspension of Registration Compliance Certificate"~~

~~Yes ( )~~

~~NO ( )~~

~~PASSED AND ADOPTED in regular session on second and final reading on this _____ day of 2022.~~

~~ATTEST:~~

~~City Clerk~~

~~First Reading~~

~~Second Reading~~

~~Approved as to form and legal sufficiency:~~

ATTEST: CITY OF MARCO ISLAND, FLORIDA

By: By:
Michael Sheffield, City Clerk Erick Brechnitz, Chair

Approved as to form:

By:
Alan L. Gabriel, City Attorney

EXHIBIT “H”

CITY OF MARCO ISLAND

ORDINANCE 22-08

AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA, AMENDING CHAPTER 30 , ARTICLE II, "ZONING," OF THE CITY OF MARCO ISLAND CODE OF ORDINANCES BY CREATING A NEW SECTION 30-90, TO ESTABLISH A SELF-FINANCED, TRANSIENT SINGLE-FAMILY HOME (RSF) RENTAL REGISTRATION PROGRAM; WITH DEFINED TERMS; CONDITIONS REQUIRING TRANSIENT, SINGLE-FAMILY HOME RENTAL REGISTRATION AND APPLICATION REQUIREMENTS; CREATING TRANSIENT RENTAL REGISTRATION PROCESS; DEFINING THE QUALIFICATION OF AND REQUIREMENTS FOR A RESPONSIBLE PARTY; TRANSIENT RENTAL STANDARDS/RULES AND INSPECTIONS; THE PROCESS FOR RENEWAL OF REGISTRATION AND PENALTIES RESULTING IN FINES AND/OR THE SUSPENSION OF THE CERTIFICATE OF RENTAL COMPLIANCE; PROVIDING FOR INTERPRETATION; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AUTHORITY TO CODIFY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS on August 23, 2022, the voters of the City of Marco Island (the "City") voted in favor of a referendum to implement a transient rental registration program in residential single family (RSF) districts pursuant to the ordinance referenced in the referendum (the "Ordinance"). The Ordinance as presented to and approved by Marco registered voters is attached hereto as **Exhibit "A"**; and

WHEREAS, as provided in the Ordinance, and pursuant to the City of Marco Island Charter, once approved by the City's electors, the Ordinance shall become effective upon its passage following second and final reading by the City Council; and

WHEREAS, in order to ensure conformance with the City's existing Code of Ordinances and Land Development Code, there are revisions necessary to be made to the Ordinance. A copy of the Ordinance with the necessary revisions is attached hereto as **Exhibit "B"** to this Ordinance; and

WHEREAS, the transient rental registration program provisions, as codified in Section 2 of this Ordinance are hereby adopted by the City of Marco Island City Council pursuant to the City Council's legal obligation following the August 23, 2022 referendum; and

WHEREAS, the City of Marco Island's Land Development Code needs to be updated and revised to "Create a Rental Registration Program for RSF Zoned properties; and

WHEREAS, the City Council of the City of Marco Island, Florida, finds the enclosed ordinance is consistent with the latest version of the Marco Island Comprehensive Plan; and

WHEREAS, the City Council of the City of Marco Island has determined that the proposed revisions to the Land Development Code are in the best interests of the general health, safety, and welfare of the residents and businesses of the City of Marco Island.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA, that:

SECTION 1. Recitals. The above recitals are true and correct and are hereby incorporated into this Ordinance as if fully restated herein.

SECTION 2. Amendment and Adoption. Chapter 30 "Land Development Code," Article II "Zoning" of the Code of Ordinances of the City of Marco Island, Florida, be, and the same are hereby amended by enacting a new Section 30-90 entitled "Rental Registration Program,", to provide as follows:[1]

CHAPTER 30 – LAND DEVELOPMENT CODE

****

ARTICLE II. – ZONING

****

Sec. 30-90. – Rental Registration Program

30-90.1. Definitions

(a) "Certificate of Transient Rental Compliance" means the document that is issued by the City that bears the words "Transient Rental Certificate of Compliance" and evidences that the person or entity, in whose name the document is issued, has complied with the provisions of this Section relating to transient rentals.

(b) "Garbage" which is included in the definition of "Litter," as defined in Section 18-32 of the City of Marco Island Code of Ordinances.

(c) "Noise" is defined as any sounds emanating from the Transient Public Lodging Establishment that can be heard from any adjacent or non-adjacent property. This includes, but is not limited to, human sounds, animal sounds, electronically generated sounds, musically generated sounds, or any other sounds that would not be heard if the Transient Public Lodging Establishment were not

[1] Additions to existing city code text are shown by underline; deletions from existing city code text are shown by ~~strikethrough~~.

occupied. Any other sounds not applicable in this Section shall be subject to Sections 18-104 and 18-105 of the City of Marco Island Code of Ordinances.

(d) "Residential property" as used as a Transient Rental under this Section shall be defined as a single family home public lodging establishment. See definition of Vacation Rental/Transient Rental below.

(e) "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 the property and the conduct and acts of transient occupants of residential properties. The Responsible Party shall be able to physically respond to the property within 1 (one) hour after notification.

(f) "Sleeping Room" shall mean a room or space within a dwelling unit, primarily designed and used or intended to be used for sleeping purposes, excluding, kitchens, bathrooms, shower rooms, water closet compartments, laundries, pantries, foyers, connecting corridors, garages, closets and storage space. Living rooms and/or family rooms may be utilized for sleeping if, and only if, permanent sleeping furniture is provided such as a sleeper sofa.

(g) "Transient Occupants" means any person, or guest or invitee of such person, who occupies or is in actual or apparent control or possession of residential property for a period of less than 30 days, registered as required pursuant to this Section. It shall be a rebuttable presumption that any person who holds themselves out as being an occupant or guest of an occupant of the Transient Rental is a Transient Occupant.

(h) "Vacation Rental/Transient Rental". Section 509.013(4)(a), Florida Statutes defines Transient Public Lodging Establishments as follows: "Public lodging establishment" includes a transient public lodging establishment as defined in subparagraph (i).

(i) "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.

(ii) The definition contained in subsection (i) shall apply to any individually or collectively owned RSF zoned single-family home, irrespective of the number of bedrooms, that is rented to Transient Occupants (guests) more than three (3) times in a calendar year for periods of less than thirty (30) days, or which is advertised or held out to the public as a place regularly rented to Transient Occupants.

(i) "Tenant," "Tenants," or "Group of Tenants" are defined as transient occupant(s) or guests.

30-90.2. Registration Required

(a) It is unlawful for any person to allow another person to occupy any residential property that is a single-family, RSF zoned, house or dwelling unit as a Transient Rental within the City of Marco Island, or offer such property for rent as a Transient Rental within the City of Marco Island, unless the person has registered the property as a Transient Rental property with the City of Marco Island, or Designee, and the Transient Rental property has been issued a Certificate of Transient Rental Compliance in accordance with the provisions of this Section.

(b) An application for registration as a Transient Rental is deemed pending when the application has been filed, all applicable fees have been paid to the City pursuant to Section 30-90.3, Code of Ordinances of the City of Marco Island, Florida, a Certificate of Transient Rental Compliance has not been issued for the property and the application has not been rejected. A registration application rejected as incomplete is not pending. Notwithstanding subsection (a) above, a person may allow another person to occupy a residential property, for which a Certificate of Transient Rental Compliance has not been issued, as a Transient Rental, when an application is pending if:

(1) The residential property has an effective or pending license as a Transient Rental classification of public lodging establishment issued by the Florida Department of Business and Professional Regulations; and

(2) The residential property is not in violation of any section of the Code of Ordinances of the City of Marco Island; and

(3) An application for registration of the residential property as a Transient Rental has been filed pursuant to Section 30-90.3 and all applicable fees have been paid; and

(4) That said occupancy of the Transient Rental was scheduled prior to June 30, 2023, as evidenced by a written and validly executed transient occupancy agreement or contract provided to the City Manager, or his/her Designee.

(5) The residential property has no fines or liens, payable to the City of Marco Island, outstanding at the time of Application.

(6) Transient Rental shall be registered annually.

30-90.3. Application for Transient Rental Registration

(a) A separate application for registration of a Transient Rental shall be made to the City Manager or his/her designee for each dwelling unit, as the term is defined in Section 30-90.1 of the City of Marco Island, Florida, Land Development Code, proposed for use as a Transient Rental and 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, electronic mail address, and phone number of owner of said property; Name, address, electronic mail address, and emergency contact phone number of Responsible Party for said property, which shall be a twenty-four (24) hour, seven (7) days a week contact phone number.

(3) That the phone number for the Responsible party will be answered twenty four (24) hours a day, seven (7) days a week by the Responsible Party.

(4) Acknowledgements by owner of the following:

a. That all overnight vehicles associated with the Transient Rental must be parked within a driveway located on the subject property and said driveway is constructed in compliance with the Code of Ordinances of the City of Marco Island.

b. That it shall be unlawful to allow or make any noise or sound that exceeds the limits set forth in Section 30-90.9, Transient Rental Noise Control.

c. That the owner shall comply with all applicable City, County, State and Federal laws, rules, Regulations, Ordinances and Statutes.

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 solid waste container shall be removed before 7:00 p.m. 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.

f. That other properties are not jointly shared commodities and should not be considered available for use by transient occupants of the property subject of the application; and

(5) Proof of owner's current ownership of the property;

(6) Proof of registration with the Florida Department of Revenue for sales tax collection (for Collier County Sales Tax); and

(7) Proof of licensure with the Florida Department of Business and Professional Regulation for a transient public lodging establishment.

(8) Minimum Insurance Requirements: Every short-term rental property licensed pursuant to this Section shall continuously maintain liability insurance appropriate to cover the short-term rental use, including any necessary policy endorsements, with a minimum of at least $1 million or solely conduct each short-term rental transaction through a platform that provides equal or greater liability insurance coverage to cover the short-term rental use. Evidence of Insurance: Every applicant shall tender to the City of Marco Island, or Designee, the certificates of insurance certifying that insurance of the types and in the amounts required by this chapter are in full force and effect at all times; and

(9) Proof of compliance with Subsection 30-90.8

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

b. An application for the modification of a Transient Rental registration is required when any of the following changes to the Transient Rental are proposed:

(1) A change in the gross square footage.

(2) A change in the number of bedrooms.

(3) A change in the maximum occupancy.

(4) A change in the number of parking spaces, or a change in the location of parking spaces.

(10) Upon completion of the changes or alterations to the Transient Rental property or the Transient Rental operation the owner shall notify the City, or Designee, within ten (10) days of completion. A new certificate of compliance may be issued if the conditions of Section 30-90.3.a have been met and all required permits have been issued for the changes or alterations.

30-90.4. Fee and Costs for Registration

(a) The City of Marco Island shall charge a Transient Rental Registration Administrative Fee. The Marco Island City Council, upon adoption of this Ordinance, will determine the amount of the Fee, per year, together with a consideration as to whether this fee is refundable or nonrefundable. The Marco Island City Council shall determine the funding method for the Registration Program, and adopt the fee by Resolution.

(1.) This annually-imposed Fee is subject to yearly adjustment and will be calculated as the total cost of the Program, including Administrative and Enforcement costs, divided by the number of Transient Rental Homes. This Fee will include the cost of the yearly Fire Inspection fee. Each Fiscal year, the City Manager, Director of Finance and any other Designated Personnel, will determine the new Program Cost Administration Fee that will be adjusted to reflect any shortage or overage for the new Fiscal year. It is the intention of the Program to be administered to not generate a profit or loss for the Program. This Program will ensure that all direct and indirect costs will be recovered according to Government Accounting Principles and will not be recovered by tax dollars. The Marco Island City Council shall determine all funding aspects of the Program.

(2.) The first year Administration Fee, shall be determined by the Marco Island City Council, and shall be assessed on per Transient Rental Home basis.

(b) No Registration can be completed if a home has outstanding fees, fines or liens owed to the City of Marco Island for any reason(s). Proof of payment of any outstanding fees, fines or liens shall be submitted prior to the issuance of any Certificate of Transient Rental Compliance.

30-90.5. Responsible Party Required.

Whenever any property is required to be registered under this Section, the owner shall appoint a natural person 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 of notice to the owner. An initial Responsible Party shall be designated, and name submitted with the application for registration, and the City Manager or his/her designee shall thereafter be notified of any change of Responsible Party within ten (10) days of such change. Further, it is the affirmative duty of the Responsible Party to:

(a) Provide all guests prior to occupancy of the property with a written summary, printed in the English and Spanish language, of applicable City of Marco Island Ordinances concerning noise, vehicle parking, garbage, and common area usage. The summary shall include citations to the applicable City of Marco Island Ordinances and instructions on how to access the complete written text. The summary shall be posted in the interior of the structure, prominently near the main entrance of the establishment.

(b) Maintain all properties under their control in compliance with the Code of Ordinances of the City of Marco Island, Florida.

(c) See that the provisions of this Section are complied with and promptly address any violations of this Section or any violations of law which may come to the attention of the Responsible Party.

(d) Be available with authority to address and coordinate solutions to problems with the transient rental of the property twenty-four (24) hours a day, seven (7) days a week.

(e) Be situated close enough to the property as to be able to respond in person within one (1) hour of being notified by a Transient Rental occupant, law enforcement officer, a City Manager designated Rental Compliance Officer/employee, emergency personnel, or the City, of issues related to the Transient Rental. Responsible party shall respond when requested.

(f) Maintain, or arrange for the maintenance, of the entire property free of garbage and litter, provided however, that this subsection shall not prohibit the storage of garbage and litter in authorized receptacles for collection.

(g) Conduct an on-site inspection of the Transient Rental at the end of each rental period to assure continued compliance with the requirements of this Section and any applicable state regulations.

30-90.6 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 Section. Transient Rental applications shall be sworn to under penalty of perjury. Any owner of any Transient Rental who engages in fraudulent advertising or activity shall be considered as engaging in a violation of this Section.

30-90.7 Minimum Requirements for Issuance of a Certificate of Compliance.

The City Manager or his/her designee may issue a Certificate of Compliance to the applicant upon proof of the following:

(a) The owner or Responsible party completes the City of Marco Island Transient Rental registration application form.

(b) The Transient Rental Registration Administrative Fee has been paid to the City of Marco Island.

(c) A signed and witnessed Responsible Party Authorization Letter (sample provided with Transient Rental Application Form). The Letter will be signed by both the Owner and Responsible Party and both signatures will be witnessed.

(d) A Florida Department of Revenue certificate of registration for purposes of collecting and remitting tourist development taxes, sales surtaxes and/or transient rental taxes.

(e) A Florida Department of Business and Professional Regulation license as a transient public lodging establishment.

(f) An affidavit, demonstrating maintaining initial and on-going compliance with Transient 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 Chapter 61C and 69A, Florida Administrative Code, as may be amended from time to time; and

(g) That the Transient Rental has satisfied the fire safety inspection requirements, annually, as provided in Section 30-90.8, of the Code of Ordinances of the City of Marco Island.

(h) Submission of the insurance document(s) referenced in Section 30-90.3.

(i) That the Transient rental is not subject to a suspension pursuant to Section 30-90.11.

30-90.8. Transient Rental Standards.

The following standards shall govern the use of any transient rental as a permitted use:

(a) Minimum life/safety requirements:

(1) Swimming pool, spa and hot tub safety. A swimming pool, spa or hot tub shall comply with the current standards of the "Residential Swimming Pool Safety Act," Chapter 515, Florida Statutes, as may be amended from time to time.

(2) Dwelling Units. All dwelling units shall meet the single-family dwelling minimum requirements of Sections 30-81 through 30-89 and Section 30-10, Definitions of a Dwelling, Single Family or One Family of the Code of Ordinances of the City of Marco Island, Florida, as may be amended from time to time.

(3) Smoke and carbon monoxide (CO) detection and notification system. A smoke and carbon monoxide (CO) detection and notification system within the transient rental unit shall be installed, operational and interconnected/hard-wired and receive primary power from the building wiring. The smoke and carbon monoxide (CO) detection and notification system will be continually maintained and tested consistent with the requirements of Section R314, Smoke Alarms, and Section R315, Carbon Monoxide Alarms, of the Florida Building Code – Residential.

(4) 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 location.

(5) That all overnight vehicles associated with the Transient Rental must be parked within a garage and/or on a driveway located on the subject property and in compliance with the Code of Ordinances of the City of Marco Island.

(6) Included in the yearly Registration Fee described in Section 30-90.4 is the cost of a Marco Island Fire Department Fire Safety inspection. This inspection shall be conducted by a City of Marco Island Licensed Fire Inspector and shall be completed in accordance with any applicable state and local fire safety regulations. This inspection, and any required corrections/modifications must be completed prior to the issuance of a Transient Rental Certificate of Compliance.

(b) Maximum occupancy. The occupancy of a Transient Rental shall not exceed:

(1) Two (2) persons per Sleeping (Bedroom) Room. The number of Bedrooms shall match the building plans or records if no plans exist, and shall be used in determining the number of Sleeping Rooms at the Transient Rental. Any advertisement or hold out for rental of the transient property must reflect and match the number of Bedrooms on record with the City of Marco Island Building Department or Collier County.

(2) The maximum number of persons allowed to gather at a Transient Rental shall not exceed one and one-half times the maximum occupants authorized to stay overnight at that site, as shown on the Certificate of Compliance, and in no event shall a gathering exceed 20 persons. After

10 p.m., the number of occupants shall not exceed the maximum occupancy described in 30-90.8(b)1, above plus a maximum of two (2) additional persons. By way of example only, the maximum number of occupants past 10 p.m. in a three-bedroom house is eight (8).This subsection shall not apply to owner-occupied Transient Rentals when the property owner is physically present on the site during the gathering.

(3) Up to two (2) persons are exempt from and shall not count towards the occupancy limits set in subsections 8(b)2 above.

(c) Solid waste handling and containment. City solid waste containers shall be provided. Appropriate screening and storage requirements for solid waste containers shall apply per any development approval. 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 7:00 p.m. of the day of pickup.

(d) Minimum transient occupancy agreement wording. The transient occupancy agreement shall contain the minimum information as provided for in subsections 30-90.8 (b), (d), and (e). The transient occupant responsible for all guests and occupancy payments will sign the transient occupancy agreement acknowledging the rules. The wording of such an agreement shall contain a clause indicating that the occupant(s) acknowledge the rules and will agree to vacate the premises in the event of a violation of this Section upon request by the Owner or Responsible Party and whereas any such vacation shall occur not more than 12 hours upon such request.

(e) Minimum transient occupancy information. The transient rental occupants shall be provided with a summary of the information required in the agreement described in subsection 30-90.8(d) with instructions on how to access the full text and the Owner shall post the following conspicuously within the establishment:

(1) A statement advising the Occupant that any sound shall not be plainly audible for a period of one (1) minute or longer at a distance of twenty-five (25) feet or more when measured from the source property line between the hours of 10:00 p.m. and 7:00 a.m. daily and at a distance of fifty (50) feet or more when measured from the source property line between the hours of 7:00 a.m. and 10:00 p.m. daily.

(2) The parking restrictions for occupant vehicles

(3) Any applicable boat storage and docking regulations and restrictions

(4) A sketch or photograph of the location of the off-street parking spaces.

(5) The days and times of trash pickup.

(6) The notice of sea turtle nesting season and sea turtle lighting regulations, if applicable.

(7) The location of the nearest hospital; and

(8) The City's non-emergency police phone number.

(9) There shall be posted, in a conspicuous location a legible copy of the building evacuation map – Minimum 8-1/2" by 11".

(f) Designation of a transient rental responsible party capable of meeting the duties provided in subsection 30-90.5.

(g) Advertising. Any advertising of the transient rental unit shall conform to information included in the Transient Rental Certificate of Compliance and the property's approval, particularly as

this pertains to maximum occupancy. A statement stating "it is unlawful for a sexual offender or sexual predator to occupy this residence" if so determined pursuant to subsection 30-90.8.h of this code and the Certificate of Compliance number shall be included in all advertising.

(h) Sexual offenders and sexual predators. It is unlawful for any property owner or designated representative to allow another person to occupy any residential property as a Transient Rental within the City of Marco Island, as a Transient Occupant if such property owner or designated representative knew 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 the Marco Island Code of Ordinances, Section 18-200, if such place, structure, or part thereof, trailer or other conveyance, is located within two thousand five hundred feet (2,500') of any school, designated public school bus stop, child day care facility, park or playground or other place where children regularly congregate. Property owner or designated representative shall determine prior to submission of an application for a Certificate of Compliance whether the Transient Rental property is located in an area unlawful sexual offenders or sexual predators to occupy pursuant to section 18-200 of the Marco Island Code of Ordinances.

(i) Posting of Certificate of Compliance. The Certificate of Compliance shall be posted on the back of or next to the interior of the main entrance door and shall include at a minimum the name, address and phone number of the Responsible party, the maximum occupancy of the Transient Rental and a statement stating "it is unlawful for a sexual offender or sexual predator to occupy this residence" if so determined pursuant to subsection 30-90.8.h.

(j) That all overnight vehicles associated with the Transient Rental must be parked within a garage or on the subject Transient Rental driveway in compliance with the Code of Ordinances of the City of Marco Island.

(k) Other standards. Any other standards contained with the Code of Ordinances of the City of Marco Island to include, but not be limited to: Transient Rental noise, setbacks, stormwater and similar provisions.

30-90.9. Transient Rental Noise Control

(a) Notwithstanding existing Noise Regulations contained in Article IV, Section 18, of the Marco Island Code of Ordinances, the use of a RSF property as a Transient Rental is a "public lodging" use of a home in a residential neighborhood. As such, a much stricter/quieter set of noise parameters must be defined for this application. For any RSF property being used as a Transient Rental, the Noise Regulations shall be defined as:

(b) Any noise shall not be plainly audible for a period of one (1) minute or longer at a distance of twenty-five (25) feet or more when measured from the source property line between the hours of 10:00 p.m. and 7:00 a.m. daily and at a distance of fifty (50) feet or more when measured from the source property line between the hours of 7:00 a.m. and 10:00 p.m., daily."

(c) For all other Noise applications, Article IV of the Marco Island Code of Ordinances shall apply.

30-90.10 Expiration of Registration and Certificates of Compliance

(a) All registrations for which a certificate of compliance has been issued under the provisions of this Section shall be valid for no more than one year, and all registrations and certificates of compliance shall expire each year. The application for renewal must be submitted no later than sixty (60)

days prior to the expiration date. Dates for renewal and applicable late renewal fees shall be established by resolution of the City Council of the City of Marco Island, or Designee, in accordance with Section 30-90.4., and shall be charged to an application for renewal submitted prior to the expiration date but after the sixty (60) days required by this section. All applications for renewal received after the annual expiration date shall be processed as a new application and subject to all applicable fees.

30-90.11 Penalties and Offenses

(a) Any Certificate of Rental Compliance issued pursuant to this Section may be or suspended by the Magistrate pursuant to Section 11(d) of this Section. Such suspension is in addition to any penalty provided herein.

(b) Offenses/violations.

(1) Non-compliance with any provisions of this Section shall constitute a violation of this Section.

(2) Separate violations. Each day a violation exists shall constitute a separate and distinct violation.

(c) Remedies/enforcement.

(1) Violations of this Section 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 transient rental program it is key that transient rental Responsible Parties are responsive and responsible in the management of the property for compliance with this section.

Any person, persons, Transient Rental owner, guilty of violating any of the provisions of this Section shall be deemed guilty of a civil infraction. The amount of the civil penalty may be up to $250.00 for the first violation, up to $500.00 for the second violation within a 12 month period, up to $1,000.00 for the third violation within a 12-month period, up to $2,000.00 for the fourth violation within a 12 month period, up to $4,000.00 for the fifth violation within a 12 month period, and up to $5,000.00 for the sixth and any subsequent violations within a 12 month period.

(2) Any person who operates a Transient Rental and fails to register as required in Sections 3 and 4 of this Section shall be subject to a daily fine of $1,000.00 for each day the Transient Rental is operated without a valid Transient Rental Certificate of Compliance.

(3) Additional remedies. Nothing contained herein shall prevent the City of Marco Island from seeking all other available remedies which may include, but not be limited to, suspension of a Transient Rental Certificate of Compliance, injunctive relief, liens and other civil and criminal penalties as provided by law, as well as referral to other enforcing agencies.

(d) Suspension of Transient Rental Certificate of Compliance. In addition to any fines and any other remedies described herein or provided for by law, a magistrate may suspend a Transient Rental Certificate of Compliance in accordance with the following:

(1) Suspension time frames.

a. Upon a fourth violation of this Section within 24 months the Transient Rental Certificate may be suspended for a period of up to one hundred eighty (180) calendar days at the discretion of the magistrate.

b. Upon a fifth violation of this Section within 24 months the Transient Rental Certificate may be suspended for a period of up to three hundred sixty-five (365) calendar days at the discretion of the magistrate.

c. For each additional violation of this Section within 24 months the Transient Rental Certificate may be suspended for a period of up to an additional thirty (30) calendar days at the discretion of the magistrate, up to a maximum period of twelve (12) months. For example, the sixth violation shall be for three hundred ninety-five (395) calendar days; the seventh violation shall be for four hundred fifteen (415) calendar days, and so on.

d. A Transient Rental Certificate of Compliance shall be subject to temporary suspension beginning five (5) working days after a citation is issued for a violation of the Florida Building Code, or Florida Fire Prevention Code. Such suspension shall remain in place until the transient rental is reinspected, and it is determined that the violation no longer exists by the City, in accordance with d.2. below.

(2) Suspension restrictions. A transient rental may not provide transient rental occupancy during any period of suspension of a Transient Rental certificate. This provision shall not prevent a Transient Rental owner from exercising a long-term rental (any rental 30 continuous days or more) during a suspension period. However, in the event a transient occupant does not occupy the Transient Rental for at least 30 continuous days, the Transient Rental owner cannot initiate a new rental lease until the full 30-day period has elapsed. A Transient Rental that enables and executes Transient Rental occupancy for any period less than 30 continuous days during a suspension period shall be considered to be in violation of this Section and shall be subject to the enforcement penalties of this section.

a. The suspension shall begin immediately following notice, commencing either;

i. at the end of the current transient rental lease period; or

ii. within thirty (30) calendar days, whichever date commences earlier, or as otherwise determined by the Magistrate.

b. Operation during any period of suspension shall be deemed a violation pursuant to this Section and shall be subject to daily fine, up to One Thousand Dollars ($1,000.00) or to the maximum amount as otherwise provided in Florida Statutes for repeat violations, for each day that the transient rental operates during a period of suspension.

c. An application for a renewal may be submitted during the period of suspension: however, no Certificate of Compliance may be issued for the transient rental until the period of suspension has expired.

d. A Transient Rental Certificate of Compliance cannot be reinstated from suspension if any fines, liens, fees are outstanding and due to the City of Marco Island.

e. In accordance with Section 30-90.2.a, any Transient Rental property where the Transient Rental Certificate of Compliance has been suspended, is not legally eligible to be advertised as a short-term rental property during the period of suspension. The City of Marco Island, or Designee, will notify the Responsible Party with regard to a suspension.

30-90.12 Complaints.

(a) Whenever a violation of this Section occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof, shall be filed with the City Manager or his/her designee. The City Manager or his/her designee shall promptly record such complaint, investigate, and take action thereon **in accordance with this Section.**

(b) A Violation and/or complaint may also be filed by telephone directly to the City of Marco Island, or Designee, Rental Hotline. This number will be published, when operational, on the City website and via local newspapers. Operation of the Hotline will be determined by the City Manager and/or his or her Designee.

30-90.13 Enforcement.

The provisions of this Section shall be enforced as provided in Section 14 - Code Enforcement, of the Code of Ordinances of the City of Marco Island, Florida.

30-90.14 Rental Registration Program Administration.

The Marco Island City Council shall be responsible for the implementation and funding for the Program described in this Ordinance.

30-90.15 Rental Registration Program Subordination.

(a) Upon any determination that Short Term Rentals are illegal on Marco Island, this Section shall not apply for any such illegal rental(s) and the illegal rental(s) shall cease to operate in accordance with the provisions herein.

(b) However, in the event that any other rental in the RSF district that is not deemed illegal and that is defined by Florida State Statutes as a "Public Lodging Establishment" or any transient rental that is not a primary or principal residence of the renting party, any such rental shall be governed and regulated by this Section.

SECTION 3. Severability / Interpretation.

(a) If any term, section, clause, sentence or phrase of this Ordinance is for any reason held to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the other remaining terms, section, clauses, sentences, or phrases or portions of this Ordinance, and this Ordinances 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 this Ordinance, underlined words indicate additions to existing text, and ~~stricken through~~ words include deletions from existing text. Asterisks (****) indicate a deletion from the Ordinance of text, which continues to exist 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 4. Conflicts. All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict with the provisions of this Ordinance are hereby superseded and resolved to the extent of any conflict in favor of the provisions of this Ordinance.

SECTION 5. Codification. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the City Code of the City of Marco Island, and that the sections of this Ordinance may be renumbered to accomplish such intent.

SECTION 6 Effective Date. This Ordinance shall take effect immediately upon its passage on second and final reading of the Marco Island City Council.

PASSED AND ADOPTED in regular session on second and final reading on this 5th day of December 2022.

ATTEST:

By: _____
Michael Sheffield, City Clerk

CITY OF MARCO ISLAND, FLORIDA

By: _____
Gregory Folley, Chairman

Approved as to form:

By: _____
Alan L. Gabriel, City Attorney