

ORDINANCE NO. 2019-51

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA CREATING SECTION 28-155 WHICH CODIFIES THE FINDINGS, INTENT, PURPOSE, AND INTERPRETATION FOUND IN ORDINANCE 2010-24 THAT ESTABLISHED REGULATIONS FOR REGISTRATION AND PERMISSIBLE ACTIVITIES FOR SHORT-TERM RENTALS IN RS-1 AND RS-2 CATEGORIES; PROVIDING FOR INCLUSION IN THE CODE OF THE CITY OF ST. AUGUSTINE; PROVIDING FOR SEVERANCE OF INVALID PROVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, § 166.041, Florida Statutes, provides for procedures for the adoption of ordinances and resolutions by municipalities; and,

**WHEREAS**, on April 28, 1975, Ordinance 1974-37 enacted a comprehensive scheme of zoning regulations including definitions for motel uses and limitations on permitted uses in Residential Single Family 1 and 2 (RS-1 and RS-2) zoning districts;

**WHEREAS**, Ordinance 2010-24 was adopted by the St. Augustine City Commission on August 23, 2010; and

**WHEREAS**, zoning restrictions of uses, known as Euclidean Zoning, has been a legal form of zoning restriction since the 1926 United States Supreme Court decision in Village of Euclid v. Ambler Realty Co., and the City's municipal code is explicitly a use restricted code, per Sec. 28-7, "The use of provisions in the various zoning districts are exclusive and any use not included under permitted or permissible uses shall be prohibited in such districts"; and

**WHEREAS**, Ordinance 2010-24 included factual findings, described the legislative intent, promulgated the purpose of the regulation, and provided the enacting governmental agency's interpretation of the relevant municipal code; and

**WHEREAS**, the editorial codification of Ordinance 2010-24 omitted the preamble, also known as the "whereas" clauses, found in the originally adopted ordinance; and

**WHEREAS**, consistent with Dills v. City of Marietta, 674 F. 2d 1377 (11<sup>th</sup> Cir. 1982), and Florida Attorney General Opinion 077-49, preambles establish contemporaneous findings of fact and law, as well as, the interpretation, purpose and intent of the enactment; and

**WHEREAS**, the City's Planning and Building department provides information to short-term rental and vacation rental property owners regarding restrictions in RS-1 and RS-2 zoning during the required registration process found in Ordinance 2010-24 and the City's website also provides information regarding RS-1 and RS-2 weekly rental restrictions as part of its informational outreach, in addition to partnering with local neighborhood groups to distribute paper pamphlets regarding RS-1 and RS-2 weekly rental restrictions; and

**WHEREAS**, Florida Statutes at Section 509.032(7)(b), preempts local government from prohibiting vacation rentals, and from regulating the duration or frequency of the rentals, however, this preemption does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011; and

**WHEREAS**, consistent with City of Miami v. AirBnb, Inc., 260 So. 3d 478 (Fla. 3<sup>d</sup> DCA 2018) and Florida Attorney General Opinion AGO-2019-07, this ordinance seeks to codify language "identical in its material provisions" to that found in the 2010 enacted ordinance; and,

**WHEREAS**, after review, the Planning and Zoning Board recommended approval of this ordinance at its January 7, 2020 regular meeting; and

**WHEREAS**, the City Commission for the City of St. Augustine finds that it is in the best interest of public health, safety and general welfare that the following amendment be adopted.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION FOR THE CITY OF ST. AUGUSTINE, FLORIDA, AS FOLLOWS:**

Section 1. Creating Chapter 28, Article III, Division 2., Section 28-155. Chapter 28, Article III, Division 2., Section 28-155 of the Code of the City of St. Augustine, is hereby created as follows:

**Sec. 28-155. – Effect of Ordinance 2010-24 on RS-1 and RS-2 Short-Term Rentals.**

*(a) Codification of Findings and Intent of Ordinance 2010-24.*

The rental of single-family homes or legally existing non-conforming two-family dwelling units for periods of a week or longer in residentially zoned neighborhoods does not constitute a motel as defined by the City Code.

The Residential, Single-family-one (RS-1) and the Residential, Single-family-two (RS-2) zoning districts govern those neighborhoods designated for single-family dwellings and uses compatible with low density single-family uses in order to create and maintain a stable low intensity residential character.

The rental of single-family dwelling units in the RS-1 and RS-2 zoning districts for periods of one week or more but less than a long term, approximately three (3) months or more, creates an environment which does not maintain a stable, low intensity residential character unless such rentals are regulated.

Large gatherings, twenty (20) or more persons, at a single-family residential dwelling unit are not uncommon in a single-family residential neighborhood on an occasional basis, but the short-term rental of a single-family dwelling unit encourages such activities more frequently than generally experienced in a stable, low intensity residential neighborhood.

On August 3, 2010, the Planning and Zoning Board (PZB) for the City of St. Augustine made recommendation to the City Commission for adoption of an ordinance to recognize and regulate short term rentals of dwelling units in the Residential, Single-family-one (RS-1) and Residential, Single-family-two (RS-2) zoning districts.

(b) *Code definition of motel enacted by Ordinance 1974-37.*

The definition for motel, referenced in Ordinance 2010-24, was enacted on April 28, 1975. Motel is defined as a building or a group of buildings in which sleeping accommodations are offered to the public and intended primarily for rental to transients with daily charge, as distinguished from multiple-family dwellings and rooming or boarding houses, where rentals are generally for periods of a week or longer and occupancy is generally by residents rather than transients.

(c) *RS-1 and RS-2 zoning districts enacted by Ordinance 1974-37.*

RS-1 and RS-2 zoning districts, referenced in Ordinance 2010-24, were enacted on April 28, 1975. RS-1 and RS-2 zoning does not allow motels, defined as rentals with daily charge.

(d) *Interpretation of weekly short-term rental requirement in RS-1 and RS-2 zoning districts.*

Ordinance 2010-24 referenced existing zoning definitions and limitations for short-term rentals in RS-1 and RS-2 zoning districts. Motel uses, defined as rentals with daily charge, are not permitted in RS-1 and RS-2 zoning. Ordinance 2010-24 allows for these residentially zoned properties to be rented as short-term rentals for periods of one week or longer with registration. Nightly rentals are deemed a motel use and are not allowed in RS-1 and RS-2 zoning.

Section 2. Inclusion in Code. The City Commission intends that the provisions of this ordinance shall become and shall be made part of Chapter 28, Section 28-155 of the Code of the City of St. Augustine, that the sections of this ordinance may be renumbered or re-lettered and that the word ordinance may be changed to section, article or other such appropriate word or phrase in order to accomplish such intentions.

Section 3. Severance of Invalid Provisions. If any section, subsection, sentence, clause, phrase, word or provision of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then said holding shall not be so construed as to render invalid or unconstitutional the remaining provisions of this ordinance.

Section 4. Effective Date. This ordinance shall become effective upon passage, pursuant to § 166.041(4), Florida Statutes.

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**PASSED** by the City Commission of the City of St. Augustine, Florida, this 27<sup>th</sup> day of January, 2020.

T.W. Upchurch  
Tracy W. Upchurch, Mayor-Commissioner

ATTEST:

Darlene Galambos  
Darlene Galambos, City Clerk  
(SEAL)

