

ORDINANCE 2024-01

AN ORDINANCE OF THE CITY OF MARY ESTHER, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE CITY OF MARY ESTHER TO ADD A NEW ARTICLE VII TO CHAPTER 13 ENTITLED “VACATION RENTALS”; MAKING LEGISLATIVE FINDINGS REGARDING THE NEED TO REGULATE VACATION RENTALS; PROVIDING FOR THE REGULATION OF VACATION RENTALS CONSISTENT WITH STATE LAW; REQUIRING REGISTRATION AND REQUIRING A CERTIFICATE OF REGISTRATION; PROVIDING REQUIREMENTS FOR REGISTRATION, INCLUDING THE DESIGNATION OF A RESPONSIBLE PARTY FOR EACH VACATION RENTAL AND MINIMUM POSTING REQUIREMENTS; PROVIDING FOR MAXIMUM OCCUPANCY LIMITS; ESTABLISHING PENALTIES FOR VIOLATIONS; PROVIDING FOR FEES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2(b) of the Florida Constitution and Chapter 166 Florida Statutes provides municipalities with the authority to exercise any power for municipal purposes except when prohibited by law; and

WHEREAS, Section 509.032(7)(b) Florida Statutes, prohibits municipalities from enacting a local law, ordinance or regulation to prohibit “vacation rentals” and further provides that a municipality may not regulate the duration or frequency of guest stays in a vacation rental; and

WHEREAS, Section 509.013, Florida Statutes, makes a distinction between “transient public lodging establishments” which are rented, advertised, or held out for rental guests more than three times in a calendar year for periods of less than 30 days or one calendar month, whichever is less; and “non-transient public lodging establishments” which are rented, or advertised or held out for rental to guests for periods of at least 30 days or one calendar month, whichever is less; and

WHEREAS, Section 509.242(1)(c), Florida Statutes, further classifies transient public lodging establishments into seven (7) categories, including hotels, motels and bed and breakfast inns; and

WHEREAS, one of these seven (7) categories is called “vacation rental” which is defined to mean “any unit or group of units in a condominium or cooperative or any individually or collectively owned single family, two family, three family or four-family house or dwelling unit” that is also a transient public lodging establishment, but that is not a timeshare project; and

WHEREAS, vacation rentals are designated by the Florida Statutes as public lodging establishments, the same as hotels, motels and bed and breakfasts; and

WHEREAS, rental of houses or dwelling units to transient visitors can result in adverse impacts to nearby residential units, including, but not necessarily limited to, increased noise, problems with garbage collection, litter, and parking; and

WHEREAS, the owners of vacation rentals often do not live in the neighborhood of the properties they rent to visitors and do not personally experience the negative impacts that may be associated with unregulated vacation rentals in those areas; and

WHEREAS, Florida law recognizes the “appointed agent” of the owner of a public lodging establishment, including a vacation rental, to exercise all the owner’s rights to eject undesirable guests, to refuse service to an undesirable guest and to be immune from criminal or civil liability for false arrest of a disorderly guest (See Sections 509.013(2); 509.141; 509.142; and 509.143, Florida Statutes); and

WHEREAS, vacation rentals are currently being operated throughout the City of Mary Esther; and

WHEREAS, the City Council desires to be proactive in its regulation of vacation rentals to protect the public safety and welfare of the City of Mary Esther; and

WHEREAS, it is necessary, appropriate, and in the best interests of the public health, safety, and welfare to monitor and provide a reasonable means for residents of the City of Mary Esther to mitigate adverse impacts of vacation rentals on neighboring residential uses; and

WHEREAS, the regulation of vacation rentals in the manner herein provided will help to achieve a greater level of compatibility between resident-occupied homes and visitor-occupied vacation rentals; and

WHEREAS, this ordinance does not prohibit vacation rentals and does not regulate the frequency or duration of guest stays in vacation rentals; and

WHEREAS, an ordinance regulating vacation rentals is in the best interest of the citizens of the City of Mary Esther.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARY ESTHER, FLORIDA, AS FOLLOWS:

Section 1. The above recitals and findings set forth are hereby adopted as additional legislative findings.

Section 2. A new Article VII shall be added to Chapter 13 of the Code of Ordinances:

Chapter 13 – LICENSES AND BUSINESS REGULATIONS

ARTICLE VII. – VACATION RENTALS

Sec. 13-191. – Statement of Intent.

- (a) It is the intent of this Article to regulate vacation rentals located in all zoning areas of the city, as defined by the Florida Statutes.

- (b) The general purpose of this Article is to ensure residents the peaceful enjoyment of their homes and neighborhoods, to mitigate incompatibilities between vacation rentals and resident-occupied homes, and to protect the safety of occupants of vacation rentals and their guests.
- (c) Complaints associated with unsupervised vacation rentals will be addressed in the manner set forth herein, including, but not limited to establishing a mandatory annual registration system for vacation rentals; requiring the owner of a vacation rental to designate an individual to be responsible for the vacation rental and to quickly respond to complaints and immediate problems associated with the vacation rental.

Sec. 13-192. – Definitions.

For purposes of this Article, the following terms, words, and phrases shall have the meaning set forth in this Article. Whenever applicable, the singular shall include the plural.

- (a) *Certificate of Registration* means the document that the City issues in accordance with Sec. 13-194 to show that the vacation rental described on the certificate is currently registered with the City as required by Sec. 13-193.
- (b) *Designated Responsible Party* means the owner of a vacation rental or a natural person who has been designated by the owner to be called upon to answer for the maintenance of the vacation rental property and to respond to inquiries or complaints regarding the conduct of the occupants of the vacation rental and their guests as provided in Sec. 13-201.
- (c) *Guest* means any person physically within the vacation rental or on its grounds with the knowledge of an occupant.
- (d) *Maximum Occupancy* means the maximum number of persons who may be occupants of a vacation rental at the same time.
- (e) *Occupant* means any person who occupies a vacation rental overnight.
- (f) *Owner or Vacation Rental Owner* means a natural person or legal entity holding all or a portion of the fee simple title to a vacation rental, whether an individual, partnership, corporation, limited liability company, trust, or other entity. If the vacation rental owner is not an individual, each person who owns an equitable interest in the vacation rental shall be considered an Owner.
- (g) *Owner Occupied* means a vacation rental that is the primary and permanent residence of the owner of the property.

- (h) *Vacation Rental* shall have the meaning as defined in Chapter 509, Florida Statutes, as may be amended.

Sec. 13-193. – Mandatory Registration.

- (a) No Vacation Rental shall be rented or offered for rent without a current valid Certificate of Registration. Failure to possess a current valid Certificate of Registration while renting or occupying a Vacation Rental is a violation of this Section. Every Vacation Rental Owner, either personally, or through an agent, shall apply to the City for an initial Certificate of Registration, utilizing forms promulgated by the City by no later than **August 1, 2024**, and shall obtain a Certificate of Registration by no later than **October 1, 2024**. Every Vacation Rental Owner, either personally or through an agent, shall apply to the City for a renewed Certificate of Registration, utilizing forms promulgated by the City, each successive year by no later than **August 1**. A separate Certificate of Registration shall be required for each Vacation Rental. The operation of a Vacation Rental without a Certificate Registration after **October 1, 2024**, shall be a violation of this Section. Every day of such operation without registration shall constitute a separate violation.
- (b) An application for a Certificate of Registration shall contain a statement from the Vacation Rental Owner, under penalty of perjury, that the Owner represents that the information provided on the application and the information submitted with the application is true and accurate to the best of the Owner's knowledge and belief. The following materials and information shall accompany the application:
- 1) A completed application for a Vacation Rental Certificate of Registration form supplied by the City of Mary Esther. At a minimum, the application form shall include the street address of the Vacation Rental, the legal description of the property on which the Vacation Rental is located; the name, mailing address, electronic mail address, and telephone number of the vacation rental owner(s); and the name, mailing address, electronic mail address, and telephone number of the Designated Responsible Party if different from the owner.
 - 2) Proof of current ownership of the Vacation Rental property.
 - 3) Payment of the annual registration fee.
 - 4) A form supplied by the City entitled "Designation of Responsible Party" signed by the Owner of the Vacation Rental or authorized representative, naming a Designated Responsible Party who shall have the duties listed in Sec. 13-201. The Vacation Rental Owners may appoint themselves as the Designated Responsible Party or shall otherwise designate someone to act as the Designated Responsible Party on their behalf.
 - 5) A written acknowledgment form signed by the Designated Responsible Party

acknowledging that they are aware of the provisions of this Article and agree to serve in the capacity of Designated Responsible Party for the Vacation Rental being registered and that they agree to discharge the duties of a Designated Responsible Party as set forth in Sec. 13-201.

- 6) A copy of the business tax receipt showing payment of the City of Mary Esther local business tax for the Vacation Rental or other proof of payment.
 - 7) A copy of a current and active license for the Vacation Rental issued by the State of Florida Department of Business and Professional Regulation showing that the Vacation Rental is licensed and remitting tourist development taxes as a transient public lodging establishment.
 - 8) Statement identifying the gross floor area and maximum occupancy for the vacation rental in compliance with the Florida Fire Prevention Code¹.
 - 9) If the application for registration is submitted on behalf of the Owner of the property, a letter of authorization from the Owner shall be required naming the authorized representative.
 - 10) Any other information that the City may reasonably request to verify compliance with the terms of this Article.
- (c) Applications will be considered incomplete if there are any unpaid registration fees, an active code compliance case, or other penalties, fines, or outstanding liens at the address of the Vacation Rental.
- (d) If the application is deemed incomplete, the applicant shall be notified of the deficiencies and provided **fifteen (15) calendar days** to correct the deficiencies. The application shall be processed if the deficiencies are corrected within this period. Failure to satisfy these requirements within the **fifteen (15) day** period shall result in the denial and withdrawal of the application.

Sec. 13-194. – Certificate of Registration.

- (a) A Certificate of Registration for a Vacation Rental shall be issued once the applicant has satisfied the requirements of Sec. 13-193.
- (a) All Certificates of Registration shall be valid and issued from **October 1 – September 30**, unless suspended per this Article.
- (b) Each Vacation Rental shall require a separate Certificate of Registration. The Certificate of Registration shall contain the street address of the Vacation Rental, the name of the Vacation Rental Owner, the name and telephone number of the Designated Responsible Party, the expiration date of the certificate, and the

¹ Fla. Admin. Code R. 69A-43.018, states the maximum as 150 square feet gross floor area per person.

Maximum Occupancy of the Vacation Rental.

Sec. 13-195. – Renewal of Registration.

- (a) All Certificates of Registration shall expire on **October 1** of each year. An Owner or authorized representative shall renew the registration annually and obtain a new Certificate of Registration prior to **August 1** of each year after the initial registration. A determination of compliance shall be made by **October 1**.
- (b) A Certificate of Registration shall not be renewed if there are any active code compliance cases or outstanding penalties, fines, or liens for violations of this Article or any provision of the City of Mary Esther Code of Ordinances pertaining to the Vacation Rental.

Sec. 13-196. – Amendment of Certificate of Registration.

An amendment of the Certificate of Registration shall be required if there is an increase in the gross floor area, maximum occupancy of the Vacation Rental, or change in the Designated Responsible Party.

Sec. 13-197. – Change in Ownership of the Vacation Rental.

When a Vacation Rental is sold, or ownership is otherwise transferred, the new Owner shall apply for a new Certificate of Registration with the City within **fifteen (15) days** from the date of the sale or transfer and shall obtain a new Certificate of Registration. If the new Owner fails to apply for a new Certificate of Registration as provided in this Article, any Certificate of Registration previously issued for that Vacation Rental shall become null and void on the **sixteenth (16th) day** following such sale or transfer.

Sec. 13-198. – No Vested Rights, Estoppel or Waiver.

The issuance of a Certificate of Registration as required by Sec. 13-193 above shall not be construed to create any vested rights or entitle the Owner of the registered Vacation Rental to any rights under the theory of estoppel. The issuance of a Certificate of Registration shall not be construed as a waiver of any other requirements contained within the City of Mary Esther Code of Ordinances.

Sec. 13-199. – Schedule of Fees and Fines.

A schedule of fees including, but not limited to, the registration, renewal, and amendment of the Certificate of Registration, and fines for violations of this Article, shall be adopted by resolution of the City Council and maintained by the City Clerk.

Sec. 13-200. – Minimum Posting Requirements.

A copy of the Certificate of Registration for the Vacation Rental shall be posted next to

or on the interior side of the primary door to the Vacation Rental.

Sec. 13-201. – Designated Responsible Party.

- (a) The duties of the Designated Responsible Party, whether the Owner or the Owner's authorized representative, are as follows:
- 1) To be available by landline or mobile telephone at one of the listed phone numbers provided to the City in the application for registration twenty-four (24) hours a day, (7) seven days a week, and to be capable of responding within **one (1) hour** in accordance with this Article or the City of Mary Esther Code of Ordinances.
 - 2) To receive service of any legal notice on behalf of the Owner for violations of this Article or other law or ordinance.
 - 3) To exercise all rights of the Owner under Section 509.141, 509.142, and 509.143, Florida Statutes, to deal with unruly occupants and their guests in the Vacation Rental, including removal, refusal of service, or detainment.
 - 4) To maintain continuous compliance with the interior posting requirements of Sec. 13-200.
 - 5) To be informed as to the names, addresses and email addresses and phone numbers of all occupants and as to the number of occupants during each rental period.
 - 6) To maintain a register with names of all occupants and their address, telephone number, electronic mail address, and dates of stays of all occupants which shall be always open to inspection by authorized personnel of the City. This information shall be retained for a minimum of two years after the occupant has vacated the Vacation Rental.
 - 7) To provide the City with notice of resignation as Designated Responsible Party in writing at least one week in advance of the effective date of the resignation.
- (b) A Designated Responsible Party must have the authority to consent to allow official code compliance, fire safety, and building inspectors access to the Vacation Rental property to conduct any required inspections.
- (c) It shall be the sole responsibility of the Owner to appoint a reliable Designated Responsible Party and to inform the City of their contact information as a part of the applicable registration as provided in Sec. 13-193 above. Failure to do so shall not be a defense to an alleged violation of this Article.
- (d) An Owner or authorized agent may amend the Certificate of Registration to change

the Designated Responsible Party temporarily or permanently. However, there shall only be one Designated Responsible Party for each Vacation Rental property at any one time. To change the Designated Responsible Party, the Owner shall notify the City in writing on a form to be provided by the City at least one week in advance and post the new Certificate of Registration in accordance with Sec. 13-200.

- (e) Personal service on, mailing, or emailing a notice of violation or other notices to the Designated Responsible Party shall be deemed valid service and notification of the Owner or occupant.

Sec. 13-202. – Maximum Occupancy.

The Maximum Occupancy of a Vacation Rental shall be stated on the Vacation Rental registration form and established by the current Florida Fire Prevention Code.

Sec. 13-203. – Advertising.

Any advertising of the Vacation Rental shall conform to the information submitted with the application for registration of the Vacation Rental and to the information shown on the Certificate of Registration for the Vacation Rental. It shall be a violation of this Article for the Owner to advertise the Vacation Rental as being available for occupancy at a level that exceeds the Maximum Occupancy established for the Vacation Rental under this Article. The existence of advertising through any medium which describes the Vacation Rental as being available for occupancy at a level that exceeds the Maximum Occupancy established for the Vacation Rental under this Article shall create a rebuttable presumption that the Vacation Rental identified in the advertising or advertisement was used in violation of this Section.

Sec. 13-204. – Violations of this Article.

- (a) Non-compliance with any provision of this Article shall constitute a violation of this Article. Violations of this Article shall specifically include, but not be limited to, the following unlawful conduct:
 - 1) It is unlawful to rent out a Vacation Rental without a current Certificate of Registration issued by the City in accordance with this Article.
 - 2) It is unlawful to advertise or otherwise offer a Vacation Rental for rent without a current Certificate of Registration issued by the City in accordance with this Article.
 - 3) It is unlawful to rent a Vacation Rental for occupancy more than the applicable Maximum Occupancy.
 - 4) It is unlawful to be an occupant of a Vacation Rental at any time that the number of occupants of the Vacation Rental exceeds its Maximum Occupancy.

- 5) It is unlawful to fail to post a copy of the Certificate of Registration in a Vacation Rental as required by this Article.
 - 6) It is unlawful to provide any false or misleading information in connection with any application for a Certificate of Registration, or for modification or renewal of a Certificate of Registration, as required by this Article. Any knowing and intentionally false statements made in any such application, or any intentionally misleading information submitted in connection with an application, may subject the applicant to a fine, revocation of the Certificate of Registration and such further penalties as described herein or otherwise provided by law.
- (b) Each day a violation exists shall constitute a separate and distinct violation.

Sec. 13-205. – Enforcement and Remedies.

- (a) Code enforcement related to this Article's violations shall be undertaken per Chapter 162 of the Florida Statutes, the City of Mary Esther Code of Ordinances, and this Article.
- (b) The City may utilize Chapter 162, Part 1, Florida Statutes, to prosecute a violation of this Article or other code violations with respect to a Vacation Rental and in such cases, the code enforcement board or special magistrate shall be authorized to hold a hearing, to assess penalties and to order other relief in accordance with Article VI of the Code of Ordinances and this Article.
- (c) Nothing herein shall prevent the City from seeking all other available remedies which may include, but shall not be limited to, suspension of a Certificate of Registration, injunctive relief, liens and other civil and criminal penalties as provided by law, as well as referral to other enforcing agencies.

Section 3. In the event that any word(s), phrase(s), portion(s), section(s), subsection(s) of this Article is (or are) contrary to law, or against public policy, or shall for any reason whatsoever be held invalid, illegal or unconstitutional by any court of competent jurisdiction, such word(s), phrase(s), portion(s), section(s), subsection(s) of this Article shall be null and void and shall be deemed severed and shall be a separate, distinct and independent provision from the remaining provisions of this Article; and such holding shall in no manner affect the validity of the remaining words, phrases, portions, sections or subsections of this Article, which shall remain in full force and effect.

Section 4. This ordinance shall take effect immediately upon approval at second reading by the City Council and signature of the Mayor.

SO DONE this ____ day of _____ 2024.

By: _____
Chris Stein, Mayor

ATTEST:

Dillon Morris
Interim City Clerk

1st Reading:
Published:
2nd Reading:

DRAFT