



Decision nearing on Daytona short-term rentals

By Eileen Zaffiro-Kean

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Within a couple of months, a Circuit Court judge is expected to decide whether short-term rentals should be allowed in Daytona Beach homes and condominiums.

DAYTONA BEACH — A two-year legal tussle over short-term vacation rentals of houses and condominiums will likely get a judge's ruling in the next couple of months.

After a 90-minute hearing Tuesday morning, Circuit Court Judge Leah Case gave the opposing attorneys representing the city and renters until May 6 to file legal documents that will help her make a decision. After the documents are turned in, Case will have 60 days to rule or at least give a status update.

The two attorneys arguing for the renters say short-term rentals in private homes have always been legal in Daytona Beach and should remain as such. The attorney representing Daytona Beach maintains the rentals have been illegal for several decades.

The argument between the two sides stems from the 2015 overhaul of the city's land development code that changed some language dealing with rentals. Land development codes are lengthy publications packed with rules that regulate the development and use of land and buildings in a city or county.

At stake in the legal fight are hundreds of millions of dollars every year for both the local hotel industry and the short-term rental market that's separate from motels, hotels, timeshares and bed and breakfast inns. Some worry the judge's decision could allow the short-term rental market to expand, crippling Daytona Beach's hotel industry.

One study showed short-term rentals are a \$31 billion industry in Florida. Daytona Beach's percentage was estimated to be \$1.24 billion per year, and the tourist tax alone could come to \$10 million to \$12 million per year, the study found.

Case's final ruling could also have a huge impact on the future of neighborhoods throughout Daytona Beach, which could see a sudden spike in vacationers staying in homes next to full-time residents.

[ALSO READ: Daytona, investors spar over short-term rentals]

For decades, Daytona Beach property owners have been inking rental deals for a few days or weeks at a time under the radar of city officials who consider them illegal because they're in residential areas where the city contends they're not allowed. When the lawsuit was filed against the city in July 2017, 22 rental property owners outed themselves to argue that they're improving neighborhoods with dramatic makeovers of ramshackle houses and boosting the local economy by luring tourists with money to spend.

The lawsuit's ultimate goal is for Daytona Beach to allow rentals of homes, condos and apartments for a few nights or weeks citywide. Short-term vacation rentals are legal in Daytona Beach along some main thoroughfares where hotels and motels are allowed, and in parts of the beachside, downtown and Midtown. They're permitted in four types of tourist zoning districts and 13 types of redevelopment area zoning districts.

Plaintiff Stephanie Ruta has said she doesn't understand why the city doesn't work with property owners to license, inspect and tax short-term rentals.

In addition to asking the city to drop any pending code enforcement actions involving vacation rentals from March 2015 forward, the plaintiffs are hoping to be compensated for lost rental bookings since the city started cracking down a few years ago.

The lawsuit accuses the city of illegally making changes to its short-term rental rules four years ago. Plaintiffs' attorney Keith Brady even accused the city of carrying out "a scheme" during Tuesday's hearing at the Volusia County Courthouse Annex on City Island.

“It’s a trick and I caught them,” alleged Brady, whose law firm has offices in Orlando and St. Petersburg.

Brady said the city’s old land development code had prohibitions on locations of accommodations, defined as places such as hotels and motels that were used for short-term lodging. The old land development code referred to homes as dwellings and they weren’t included in the prohibitions, he said. In 2015 the language changed, and there are now rental prohibitions for something called other accommodations and dwellings.

“That’s why they had to repeal it, or their scheme wouldn’t work,” Brady charged.

Assistant City Attorney Gary Glassman called Brady’s comments “offensive” and said he would have asked for a mistrial if the remarks were made in front of a jury. Tuesday’s hearing was held in a small room with only a few of the plaintiffs, attorneys for both sides, the judge and three court system employees.

Glassman said city codes typically list what’s permitted, not what’s prohibited, or else lists would get unwieldy. If the city wanted to legalize short-term rentals in homes it would have spelled that out, he said.

“If it’s not there, it’s not permitted,” Glassman said.

But the lawsuit maintains that the city’s old land development code did not expressly prohibit vacation rentals in any residential zoning district. A residential ban, and a prohibition in parts of some redevelopment areas, didn’t come until January 2015 when the city’s new land development code was adopted by the City Commission, according to the lawsuit.

Brady argues that the city had no legal right in 2015 to change short-term rental rules. A state law states that, since June 1, 2011, municipalities haven’t been able to adopt new local laws or regulations that “prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals.”

Glassman said the city’s short-term rental rules were grandfathered in eight years ago. Then the new land development code “carried forward the city’s existing regulations relating to short-term rentals that were in the city’s prior land

development code, originally adopted in 1993,” Glassman wrote in court documents.

Glassman argued in a court filing last year aiming to get the case tossed out that the plaintiffs have failed to show that the city’s rental rules are invalid and weren’t enforced prior to 2011.

Brady pointed out that when the city adopted a new land development code, it repealed the old one. So that would deem anything in the land development code passed in 2015 as new, and in violation of the 2011 cutoff for new short-term rental rules.

“It’s an unenforceable, repealed law,” he said.

If there ever were bans on short-term rentals in Daytona Beach homes prior to 2015, the land development code repeal that year would have wiped them out, Brady argued.

Glassman said in hindsight it might have been best not to call it a repeal in 2015. It was an update because cities need to rewrite their land development codes from time to time because land uses and regulations change, he said. He said the city was fully aware of the state statute mandating the 2011 cutoff.

“We have all along prohibited short-term rentals in these residential districts,” Glassman said.