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AGENDA ITEM
E 16 DATE 9/14/2020

TO: Mayor and City Council
FROM: Scott E. Simpson, City Attorney
DATE: August 20, 2020
RE: Rental Housing Local Business Tax Receipt

* * M E M O R A N D U M * *

Section 16-19(13)(a) currently provides that if the occupant of a residential property is not the owner, it is presumed that a rental arrangement exists. There is no requirement that an actual written rental agreement exist or that compensation is actually paid as those would be very difficult for the City to prove. Furthermore, the study conducted when this regulation was adopted showed that residences occupied by someone other than the owner had significantly more code violations and were not maintained as well as structures occupied by the owner.

The current regulation determines ownership based on the public records of the Volusia County Property Appraiser. However, financial arrangements do exist between the owner and buyer of real property where the owner remains the record title owner of the property according to public records after the sale, but technically the buyer is legally viewed as the owner. Florida Statute Section 679.01 recognizes that these types of arrangements are technically financing arrangements and requires that they be treated as a mortgage and foreclosed as opposed to a rental arrangement. An example is an agreement for deed where the buyer agrees to pay the owner for real property over a period of time and the deed transferring ownership of the real property to the buyer is not record in public records until full payment. According to the public records the seller is still the owner of the real property. Compare this to when a buyer executes a promissory note and mortgage in favor of the seller, which is commonly referred to as owner financing. The deed is immediately recorded in public records so the buyer is shown as the owner. Although these are two different types of arrangements, the above cited Florida Statute views them the same, ie. as financing arrangements. However, the City's current regulation would view the agreement for deed as a rental arrangement and therefore require a local business tax receipt. However, the owner financing arrangement would not be viewed as a rental arrangement.

There is a common arrangement that would not qualify as a financing arrangement which is a lease with a purchase option. That would still be viewed as a rental arrangement which would require the owner to obtain a local business tax receipt.

Since the law does recognize that financing arrangements do exist even though the ownership remains in the seller of the real property, I am recommending that the City amend Section 16-19(13)(a). The reason for the proposed amendment is to make sure the City's regulations are consistent with State law. The amendment makes it clear that the presumption of a rental arrangement is rebuttable by the property owner and that the property owner is obligated to provide the City with evidence to establish that the arrangement qualifies as a financing arrangement under Florida Statute Section 679.01.

ORDINANCE NO. 2020-19

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA AMENDING SECTION 16-19(13) (A) REGULATING THE REQUIREMENT FOR A BUSINESS TAX RECEIPT FOR RENTAL PROPERTY TO PROVIDE A REBUTTABLE PRESUMPTION OF A RENTAL ARRANGEMENT WHEN SOMEONE OTHER THAN THE OWNER OCCUPIES A RESIDENTIAL RESIDENCE; PROVIDING FOR HOW THE PRESUMPTION IS REBUTTED; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 16-19(13) (a) currently states that "a rental arrangement is presumed to exist when someone is residing in a residential structure who is not the owner of the property and someone with an ownership interest is not residing in said structure at the same time."

WHEREAS, pursuant to Florida Statute Section 697.01, financial arrangements between a seller and buyer may be viewed under the law as a mortgage, and therefore subject to foreclosure, even though the real property appears to be in the name of the seller.

WHEREAS, if the seller is able to establish that the financial arrangement between the seller and buyer qualifies as a mortgage under Florida Statute Section 697.01 and is therefore required to be foreclosed, the presumption of a rental arrangement can be rebutted and a business tax receipt would not be required.

WHEREAS, words which are underlined (underlined) are additions to the texts and words with strike through (~~strike through~~) the characters are deletions from the text.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY
OF SOUTH DAYTONA, FLORIDA:

Section 1. The City Council of the City of South Daytona
hereby amends Section 16-19(13)(a) to read as follows:

Local business tax receipt required: It shall be unlawful for any owner of residential property to rent or lease, or offer to rent or lease (throughout this subsection (13) the terms "rent" and "lease" are synonymous; as are the terms "to rent or lease" and "to offer to rent or lease") therein any dwelling or dwelling unit(s), whether single-family, duplex, triplex, multi-family, apartment, condominium, or more than one (1) room, etc., unless a current local business tax receipt therefore has been issued by the city, a copy of which is to be available at the structure in which the dwelling unit(s) is located. There is no requirement for there to be a written lease or any evidence ~~on~~ of monetary payment to establish a rental arrangement. A rental arrangement shall be presumed to exist when someone is residing in a residential structure who is not the owner of the property and someone with an ownership interest is also not residing in said structure at the same time. However, the owner can rebut this presumption by providing sufficient evidence to the City to establish that the arrangement between the property owner and the occupant qualifies as a mortgage under Florida Statute Section 697.01. To rebut the presumption that a rental arrangement exists, the property owner must clearly establish to the satisfaction of the City that the arrangement qualifies as a mortgage under Florida Statute Section 679.01.

Section 2. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any Court, such

portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or application hereof.

Section 3. That all ordinances made in conflict with this Ordinance are hereby repealed.

Section 4. That this Ordinance shall become effective immediately upon its adoption.

PASSED upon first reading at a regular meeting of the City Council of the City of South Daytona held in the City of South Daytona, Florida, on the ____ day of _____, 2020.

PASSED AND ADOPTED upon second and final reading at a regular meeting of the City Council of the City of South Daytona held in the City of South Daytona, Florida, on the _____ day of _____, 2020.

Bill Hall
Mayor

ATTEST:

James L. Gillis, Jr.
City Manager