



*We mean business<sup>SM</sup>*

MEMORANDUM

**TO:** ANDREW HOUSTON, CITY MANAGER  
CITY OF CRYSTAL RIVER, FLORIDA

**FROM:** MICHAEL J. BRANNIGAN, ESQ.  
THE HOGAN LAW FIRM, CITY ATTORNEY

**RE:** F.S. §509.032(7)(b) Preemption Authority

**DATE:** January 11, 2013

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Pursuant to the request of the City Council, I have spoken with City Attorneys from other municipalities as well as representatives of the Florida League of Cities in regards to the issue of the State’s preemption of regulation of short term or vacation rentals. I have included a copy of the relevant Florida Statute §509.032 as well as the City’s applicable Ordinance 1.07.00-B for the Council’s review.

From my conversation with the City Attorney’s of the Cities of Anna Maria Island, Holmes Beach, and Bradenton Beach, it is clear that their City Councils are also concerned with the preemption issue. It should be noted that the same legal firm represents Anna Maria Island and Holmes Beach, but all three cities have been in contact with the Florida League of Cities to see what actions can be taken in regards to this issue. I also spoke with Mr. Kraig Conn from the Florida League of Cities as he is the primary liaison between the League and the Florida Legislature. Currently, the aforementioned cities are not contemplating any legal challenge to the statute, but rather are more interested in pursuing changes through the Florida Legislature. Mr. Conn strongly recommended that any council members concerned about the State’s preemption contact their local representatives and voice these concerns.

During our conversation, Mr. Conn relayed some of the “history” of the statute and made it clear that the preemption by the State was not an unanticipated consequence. The legislature specifically intended to preempt local government in regards to this issue. In fact, the League fought against this statute, but was successful only in getting the grandfather language of subsection (7)(b) included in the statute.



At this time, there are no pending legal actions and the consensus of the parties I spoke with was that effecting change through the legislature would likely be the most efficient and effective way to challenge the preemption issue. Specifically, Mr. Conn recommended that the cities with existing ordinances lobby the legislature to include language that would permit those municipalities the power to amend or modify their existing ordinances without losing their grandfather status.

Every attorney that I spoke with as well as Mr. Conn from the League, agreed that any attempts to amend or modify an existing ordinance would most likely result in that ordinance losing the grandfather status provided in the statute.

West's Florida Statutes Annotated

Title XXXIII. Regulation of Trade, Commerce, Investments, and Solicitations (Chapters 494-560)

Chapter 509. Lodging and Food Service Establishments; Membership Campgrounds (Refs & Annos)

Part I. Public Lodging and Public Food Service Establishments

West's F.S.A. § 509.032

509.032. Duties

Effective: April 6, 2012

Currentness

**(1) General.**--The division shall carry out all of the provisions of this chapter and all other applicable laws and rules relating to the inspection or regulation of public lodging establishments and public food service establishments for the purpose of safeguarding the public health, safety, and welfare. The division shall be responsible for ascertaining that an operator licensed under this chapter does not engage in any misleading advertising or unethical practices.

**(2) Inspection of premises.**--

(a) The division has responsibility and jurisdiction for all inspections required by this chapter. The division has responsibility for quality assurance. Each licensed establishment shall be inspected at least biannually, except for transient and nontransient apartments, which shall be inspected at least annually, and shall be inspected at such other times as the division determines is necessary to ensure the public's health, safety, and welfare. The division shall establish a system to determine inspection frequency. Public lodging units classified as vacation rentals are not subject to this requirement but shall be made available to the division upon request. If, during the inspection of a public lodging establishment classified for renting to transient or nontransient tenants, an inspector identifies vulnerable adults who appear to be victims of neglect, as defined in s. 415.102, or, in the case of a building that is not equipped with automatic sprinkler systems, tenants or clients who may be unable to self-preserve in an emergency, the division shall convene meetings with the following agencies as appropriate to the individual situation: the Department of Health, the Department of Elderly Affairs, the area agency on aging, the local fire marshal, the landlord and affected tenants and clients, and other relevant organizations, to develop a plan which improves the prospects for safety of affected residents and, if necessary, identifies alternative living arrangements such as facilities licensed under part II of chapter 400 or under chapter 429.

(b) For purposes of performing required inspections and the enforcement of this chapter, the division has the right of entry and access to public lodging establishments and public food service establishments at any reasonable time.

(c) Public food service establishment inspections shall be conducted to enforce provisions of this part and to educate, inform, and promote cooperation between the division and the establishment.

(d) The division shall adopt and enforce sanitation rules consistent with law to ensure the protection of the public from food-borne illness in those establishments licensed under this chapter. These rules shall provide the standards and requirements for obtaining, storing, preparing, processing, serving, or displaying food in public food service establishments, approving public food service establishment facility plans, conducting necessary public food service establishment inspections for compliance with sanitation regulations, cooperating and coordinating with the Department of Health in epidemiological investigations, and initiating enforcement actions, and for other such responsibilities deemed necessary by the division. The division may

not establish by rule any regulation governing the design, construction, erection, alteration, modification, repair, or demolition of any public lodging or public food service establishment. It is the intent of the Legislature to preempt that function to the Florida Building Commission and the State Fire Marshal through adoption and maintenance of the Florida Building Code and the Florida Fire Prevention Code. The division shall provide technical assistance to the commission in updating the construction standards of the Florida Building Code which govern public lodging and public food service establishments. Further, the division shall enforce the provisions of the Florida Building Code which apply to public lodging and public food service establishments in conducting any inspections authorized by this part. The division, or its agent, shall notify the local firesafety authority or the State Fire Marshal of any readily observable violation of a rule adopted under chapter 633 which relates to public lodging establishments or public food establishments, and the identification of such violation does not require any firesafety inspection certification.

(e) 1. Relating to facility plan approvals, the division may establish, by rule, fees for conducting plan reviews and may grant variances from construction standards in hardship cases, which variances may be less restrictive than the provisions specified in this section or the rules adopted under this section. A variance may not be granted pursuant to this section until the division is satisfied that:

- a. The variance shall not adversely affect the health of the public,
- b. No reasonable alternative to the required construction exists.
- c. The hardship was not caused intentionally by the action of the applicant.

2. The division's advisory council shall review applications for variances and recommend agency action. The division shall make arrangements to expedite emergency requests for variances, to ensure that such requests are acted upon within 30 days of receipt.

3. The division shall establish, by rule, a fee for the cost of the variance process. Such fee shall not exceed \$150 for routine variance requests and \$300 for emergency variance requests.

(f) In conducting inspections of establishments licensed under this chapter, the division shall determine if each coin-operated amusement machine that is operated on the premises of a licensed establishment is properly registered with the Department of Revenue. Each month the division shall report to the Department of Revenue the sales tax registration number of the operator of any licensed establishment that has on location a coin-operated amusement machine and that does not have an identifying certificate conspicuously displayed as required by s. 212.05(1)(h).

(g) In inspecting public food service establishments, the department shall provide each inspected establishment with the food-recovery brochure developed under s. 570.0725.

(3) Sanitary standards; emergencies; temporary food service events.—The division shall:

(a) Prescribe sanitary standards which shall be enforced in public food service establishments.

(b) Inspect public lodging establishments and public food service establishments whenever necessary to respond to an emergency or epidemiological condition.

(e) Administer a public notification process for temporary food service events and distribute educational materials that address safe food storage, preparation, and service procedures.

1. Sponsors of temporary food service events shall notify the division not less than 3 days prior to the scheduled event of the type of food service proposed, the time and location of the event, a complete list of food service vendors participating in the event, the number of individual food service facilities each vendor will operate at the event, and the identification number of each food service vendor's current license as a public food service establishment or temporary food service event licenses. Notification may be completed orally, by telephone, in person, or in writing. A public food service establishment or food service vendor may not use this notification process to circumvent the license requirements of this chapter.

2. The division shall keep a record of all notifications received for proposed temporary food service events and shall provide appropriate educational materials to the event sponsors, including the food-recovery brochure developed under s. 570.0725.

3. a. A public food service establishment or other food service vendor must obtain one of the following classes of license from the division: an individual license, for a fee of no more than \$105, for each temporary food service event in which it participates; or an annual license, for a fee of no more than \$1,000, that entitles the licensee to participate in an unlimited number of food service events during the license period. The division shall establish license fees, by rule, and may limit the number of food service facilities a licensee may operate at a particular temporary food service event under a single license.

b. Public food service establishments holding current licenses from the division may operate under the regulations of such a license at temporary food service events of 3 days or less in duration.

(4) **Stop-sale orders.**--The division may stop the sale, and supervise the proper destruction, of any food or food product when the director or the director's designee determines that such food or food product represents a threat to the public safety or welfare. If the operator of a public food service establishment licensed under this chapter has received official notification from a health authority that a food or food product from that establishment has potentially contributed to any instance or outbreak of food-borne illness, the food or food product must be maintained in safe storage in the establishment until the responsible health authority has examined, sampled, seized, or requested destruction of the food or food product.

(5) **Reports required.**--The division shall submit annually to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees a report, which shall state, but need not be limited to, the total number of active public lodging and public food service licenses in the state, the total number of inspections of these establishments conducted by the division to ensure the enforcement of sanitary standards, the total number of inspections conducted in response to emergency or epidemiological conditions, the number of violations of each sanitary standard, the total number of inspections conducted to meet the statutorily required number of inspections, and any recommendations for improved inspection procedures. The division shall also keep accurate account of all expenses arising out of the performance of its duties and all fees collected under this chapter. The report shall be submitted by September 30 following the end of the fiscal year.

(6) **Rulemaking authority.**--The division shall adopt such rules as are necessary to carry out the provisions of this chapter.

(7) **Preemption authority.**--

(a) The regulation of public lodging establishments and public food service establishments, including, but not limited to,

**609.032. Duties, FL ST § 509.032**

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sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state. This paragraph does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.022.

(b) A local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

(c) Paragraph (b) does not apply to any local law, ordinance, or regulation exclusively relating to property valuation as a criterion for vacation rental if the local law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.

**Credits**

Laws 1915, c. 6952, §§ 1, 2, 9; Rev.Gen.St.1920, §§ 212, 213, 2130; Laws 1923, c. 9264, § 2; Comp.Gen.Laws 1927, §§ 245, 246, 3359; Laws 1933, c. 16042, §§ 3, 4; Comp.Gen.Laws Supp.1936, §§ 245, 246; Laws 1951, c. 26945, § 9; Laws 1953, c. 28129, § 1; Fla.St.1953, §§ 509.03, 509.04 and 511.11; Laws 1955, c. 29821, §§ 1, 8; Laws 1957, c. 57-389, § 1; Laws 1963, c. 63-420, § 1; Laws 1969, c. 69-106, §§ 12, 16, 35; Laws 1973, c. 73-325, § 2; Laws 1973, c. 73-333, § 135; Laws 1979, c. 79-240, § 2; Laws 1981, c. 81-161, § 1; Laws 1990, c. 90-339, § 3; Laws 1991, c. 91-40, § 2; Laws 1992, c. 92-180, § 22; Laws 1993, c. 93-53, § 2; Laws 1993, c. 93-216, § 35; Laws 1994, c. 94-314, § 19; Laws 1995, c. 95-416, § 4; Laws 1995, c. 95-418, § 137; Laws 1996, c. 96-384, § 3. Amended by Laws 1997, c. 97-103, § 1165, eff. July 1, 1997; Laws 1998, c. 98-275, § 1, eff. May 28, 1998; Laws 1998, c. 98-283, § 4, eff. May 28, 1998; Laws 1999, c. 99-8, § 246, eff. June 29, 1999; Laws 2000, c. 2000-141, § 47, eff. March 1, 2002; Laws 2000, c. 2000-154, § 47, eff. July 4, 2000; Laws 2000, c. 2000-349, § 109, eff. Sept. 1, 2000; Laws 2002, c. 2002-48, § 11, eff. April 16, 2002; Laws 2002, c. 2002-299, § 1, eff. June 5, 2002; Laws 2006, c. 2006-197, § 96, eff. July 1, 2006; Laws 2008, c. 2008-55, § 2, eff. July 1, 2008; Laws 2008, c. 2008-134, § 3, eff. July 1, 2008; Laws 2011, c. 2011-119, § 2, eff. June 2, 2011; Laws 2012, c. 2012-96, § 76, eff. April 6, 2012.

Notes of Decisions containing your search terms (0)  
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**West's F. S. A. § 509.032, FL ST § 509.032**

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Current through Chapter 229 (End) of the 2012  
Second Regular Session and the 2012 Extraordinary  
Apportionment Session of the Twenty-Second  
LegislatureEnd of Document

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*Resort housing units:* Dwelling units, other than hotels and motels, made available to persons for temporary occupancy. "Made available for temporary occupancy" means rented or occupied for time periods of less than three (3) consecutive months in duration. Where resort housing units are a permitted use, there is no limit to the frequency of change or length of stay of occupants or tenants, except that rentals of less than a one-week period are not permitted. Where resort housing units are not a permitted use, dwelling units may not be made available for rental or occupancy for periods of less than three (3) consecutive months, provided that such restriction shall not apply to temporary, non-paying guests of lawful occupants. The following shall be *prima facie* evidence that a dwelling unit is being used as a resort housing unit:

- A. Advertising a unit as being available for rental for periods of less than three (3) consecutive months; or
- B. Recording or filing land use covenants, condominium declarations, cooperative documents, public offering statements, or other legal documents which sanction, authorize or approve rental or occupancy of a unit for periods of less than four (4) consecutive weeks; or
- C. Creation of timeshare estates or periods of less than three (3) consecutive months.

