

ORDINANCE NUMBER 09-10-13C

AN ORDINANCE AMENDING THE ZONING REGULATIONS OF THE TOWN OF LAKE LURE; CREATING A NEW §92.042 REQUIRING VACATION RENTAL OPERATING PERMITS AND OTHERWISE REGULATING THE USE OF RESIDENCES AS VACATION RENTALS; PROVIDING DEFINITIONS; DELETING BOARDING AND ROOMING HOUSES, NON-PROFIT RETREATS AND NON-PROFIT LODGES AS CONDITIONAL USES IN THE R-2 ZONING DISTRICT; MAKING RESIDENTIAL VACATION RENTALS A PERMITTED USE SUBJECT TO SPECIAL REQUIREMENTS IN THE R-1, R-1A, R-1B, R-1C, R-1D, R-2, M-1, R-3, R-4, C-1, CN, CTC, CG AND S-1 ZONING DISTRICTS; PROVIDING FOR FURTHER STUDY OF THE ISSUE OF THE IMPACTS OF RESIDENTIAL VACATION RENTALS

WHEREAS, N.C.G.S. 160A-381 authorizes municipalities to adopt zoning ordinances regulating, among other things, “the location and use of buildings, structures, and land”; and

WHEREAS, N.C.G.S. 160A-174 authorizes municipalities to define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city; and

WHEREAS, the Town of Lake Lure appointed a Stakeholders’ Committee to study the impacts of residential vacation rentals and to make recommendations regarding the regulations of such uses; and

WHEREAS, after more than a year of study the Stakeholders’ Committee adopted a Summary Report including study and policy recommendations; and

WHEREAS, the Zoning and Planning Board has recommended modifications to the Zoning Regulations of the Town of Lake Lure as noted in the title of this ordinance which are generally consistent with Summary Report of the Stakeholders’ Committee; and

WHEREAS, the Lake Lure Town Council, after due notice, conducted a public hearing on the 1st day of October, 2009, upon the question of amending the Zoning Regulations in this respect.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LAKE LURE, NORTH CAROLINA, MEETING IN REGULAR SESSION AND WITH A MAJORITY OF THE COUNCIL MEMBERS VOTING IN THE AFFIRMATIVE:

SECTION ONE. *Authority; Title.* This ordinance is enacted pursuant to the grants of authority contained in Sections 160A-174 and 160A-381 of the North Carolina General Statutes. It shall be known and may be referred to as the Residential Vacation Rental Ordinance.

SECTION TWO. *Findings; Purpose.*

- A. Town Council finds that residential vacation rentals, as defined herein, can have a positive economic impact in the community and enhance tourism by providing lodging alternatives to hotels, motels, lodges or bed-and-breakfast facilities. At the same time, residential vacation rentals differ from other vacation rental properties due to the fact that, unlike hotels, motels, inns, lodges, boarding and rooming houses, or bed-and-breakfast facilities, there is typically no onsite management to supervise activities.
- B. Town Council further finds that residential vacation rentals, as defined herein, have not historically been recognized as a use under the Town's Zoning Regulations.
- C. Town Council further finds that residential vacation rentals are commercial uses, much like hotels or motels, that have potential to conflict with neighboring residential uses and may have an adverse impact on the appearance, tranquility, safety, health, and standard of living in surrounding residential neighborhoods. In this regard Town Council finds that the residential character of a neighborhood may be compromised when a significant number of homes are occupied not by permanent residents but by a stream of tenants staying for relatively short periods of time.
- D. It is the purpose of this Ordinance to regulate residential vacation rentals in order to help ensure that tourists have a good experience while staying in Lake Lure, thus contributing to the continued vitality of that industry and the economic well-being of the Town. It is further the purpose of this Ordinance to safeguard the health, peace, safety, harmony and general welfare of existing residential neighborhoods from impacts that tend to accompany the frequent, intensive use of residences by temporary populations in the Town.
- E. It is further the purpose of this Ordinance to provide an opportunity for the Town to study the effects of the regulatory provisions of this Ordinance with regard to the potential problems associated with residential vacation rentals.
- F. Town Council is hopeful that a program of regulatory oversight will ultimately achieve the objectives stated herein. To determine whether that is the case, this Ordinance calls for ongoing study of the effects of the program and of the impacts of residential vacation rentals on single-family residential zoning districts. Should those studies indicate that the objectives of this Ordinance are not being achieved, it is the desire of Council and the intent of this Ordinance that future ordinance(s) be enacted to further regulate and, if necessary, prohibit residential vacation rentals in the R-1, R-1A, R-1B, R-1C, R-1D, R-2, and M-1 zoning districts and to amortize them in such districts for an appropriate period of time.

- G. Town Council further finds that this Ordinance is consistent with the 2007-2027 Town of Lake Lure Comprehensive Plan, specifically with regard to the following:

Section 11.1 Land Use & Growth Management: Introduction.

“As the town has attracted more visitors, many have subsequently purchased homes in the area for vacation and/or investment purposes, while others have relocated permanently to Lake Lure. Similarly, continued tourism interest has increased the demand for seasonal housing and commercial services. Both of these factors have contributed to Lake Lure’s growth and have had an impact on land use. Through proper growth management and land use planning, development can maintain its course without jeopardizing the quality of the environment or the quality of life for residents and visitors.”

Goal LU-1: Land uses coincide with long-term vision.

Policy LU-1-2.3:

“Study the impacts (e.g. economic, quality of life, etc.) of vacation rentals, particularly those along the lakefront, to determine the need for controls (e.g. additional regulations) or other measures to ensure that the value and enjoyment of all lakefront properties are maintained and adopt controls for vacation rentals as determined by the study recommendations. Once regulatory controls have been put in place, the Town should then study the effects of those controls and of the impacts of residential vacation rentals on single-family residential zoning districts. Should those studies indicate that the controls are not proving effective in preserving the character of the Town's single-family residential neighborhoods, then the Town should proceed to prohibit vacation rentals in those zoning districts whose primary purpose is for single-family dwellings and should take the steps necessary to amortize vacation rentals within such districts.”

- H. Town Council further finds that the Stakeholders Committee appointed by Town Council spent more than a year studying the impacts of vacation rentals and that this Ordinance is generally consistent with the report and recommendations of that Committee with two significant exceptions: (1) this Ordinance calls for further study of the impacts of vacation rentals by means of a licensing and regulatory

program that will collect data regarding the scale of residential vacation rentals and their impacts on the community; and (2) rather than prohibit (and amortize) residential vacation rentals in the single-family residential zoning districts, this Ordinance gives an opportunity for the regulatory program to be evaluated prior to any decision being made with regard to prohibiting such uses.

SECTION THREE. Section 92.005 of the Zoning Regulations of the Town of Lake Lure, entitled "Definitions", is hereby amended to add the following definition:

Residential Vacation Rental. The rental of any single-family dwelling, or duplex, or any portion thereof, for occupancy, dwelling, lodging or sleeping purposes for any period of time less than 30 days. For purposes of this Ordinance, the term does not include multi-family dwellings nor does it apply to duplexes other than those situated within the R-1, R-1A, R-1B, R-1C, R-1D, R-2 and M-1 zoning districts.

Residential Vacation Rental Operator (Operator). The owner of a residential vacation rental or a responsible party designated by the owner to act for and on behalf of the owner in managing the property. If the operator is not the owner, the actions, undertakings and certifications of the operator shall be binding on the owner.

Residential Vacation Rental Property. Real property used or intended to be used for residential vacation rental purposes.

Vacation Rental Operating Permit. The permit needed to operate a residential vacation rental as defined herein.

SECTION FOUR. Section 92.042 of the Zoning Regulations of the Town of Lake Lure, entitled "Residential Vacation Rentals", is hereby created to read as follows:

§92.042 Residential Vacation Rentals.

- (A) *Use Recognized; Vacation Rental Operating Permit Required.* Residential vacation rentals are hereby recognized as a use within the planning jurisdiction of the Town of Lake Lure. Except as provided herein, on and after 1 January 2010, it shall be a violation of these Zoning Regulations to operate a residential vacation rental without a vacation rental operating permit from the Town.
- (B) *Exceptions.* The following activities and / or uses shall not be deemed residential vacation rentals and the requirements of this section shall not apply to them.

- (1) Incidental residential vacation rentals, defined to mean no more than two such rentals in any calendar year where the total annual rental period for both rentals does not exceed two weeks.
 - (2) Rentals of property in any hotel, lodge, motel, bed & breakfast establishment, or boarding & rooming house, with a valid certificate of zoning compliance.
 - (3) Rentals of a dwelling unit in a duplex only when the owner of the duplex resides in the other dwelling unit in that duplex.
- (C) ***Vacation Rental Operating Permits.*** Every residential vacation rental shall require a vacation rental operating permit issued pursuant to the regulations contained herein. The vacation rental operating permit may also function as a certificate of zoning compliance for a residential vacation rental.
- (1) *Application.* In order to obtain a vacation rental operating permit the owner or the operator shall submit an application for each such residential vacation rental which complies with the requirements of §92.042(D), below, and shall pay all applicable fees in accordance with the Town's adopted fee schedule.
 - (2) *Decision of the Zoning Administrator.* The Zoning Administrator shall review the application along with the report of the permit inspection, if any, and other pertinent information. The Administrator shall issue a permit upon determining that the application and supporting information demonstrate compliance with the requirements of this section and other applicable provisions of these Zoning Regulations and the Town Code of Ordinances and all other applicable regulations. If compliance with such provisions is not demonstrated, the Administrator shall deny the application in writing, stating therein the grounds for denial. The decision of the Administrator may be appealed to the Board of Adjustment pursuant to § 92.086 of these Zoning Regulations by any party with standing.
 - (3) *Administration of Vacation Rental Operating Permits.* In administering this section, the Zoning Administrator shall have all the remedies and enforcement provisions contained in Article 13 of these Zoning Regulations, and, in addition thereto, shall have the power to suspend vacation rental operating permits.

If a neighboring property owner has filed a formal, written complaint with the Zoning Administrator alleging a substantive violation of the regulations contained in this section, the Zoning Administrator shall serve a copy of his or her written decision on such neighboring property owner in the same manner as is done to the operator of the residential vacation rental. The operator and any such property owner(s) shall have standing to appeal the Zoning Administrator's decision to the Board of Adjustment pursuant to §92.086 of these Zoning Regulations.

- (4) *Appeals.* The Zoning Administrator shall provide notice of the hearing at which the Board of Adjustment will take up an administrative appeal to the residential vacation rental operator and to anyone else who has requested such in writing. Appeals shall be conducted in accordance with the provisions contained in §92.086 of the Zoning Regulations with the proviso that the residential vacation rental operator may elect to offer evidence of remedial steps taken or proposed to be taken to provide assurance of future compliance with this section. If the operator demonstrates that the cause(s) for any regulatory violations have been satisfactorily addressed and are not likely to reoccur, the Board of Adjustment may fashion an appropriate remedy and in doing so shall evaluate the impacts of the residential vacation rental on the particular neighborhood in which it is located and shall have full power to impose conditions on the operation of such residential vacation rental.

- (D) *Contents of Application.* The application for a vacation rental operating permit shall contain the following information. The application shall be signed and sworn to by the operator.

- (1) The address of the property.
- (2) Name and contact information for the owner of the property.
- (3) Name and contact information for the operator if other than the owner.
- (4) A site plan showing the off-street parking area(s) for the property.
- (5) The number of bedrooms on the property intended to be used for occupancy.

- (6) If the property is served by a septic system, a statement attesting to the adequacy of the system to accommodate the number of bedrooms intended for occupancy pursuant to these regulations. This shall be satisfied by providing a copy of the septic permit issued by County Health Department for the property. In such event, the number of bedrooms listed on the County Health Department permit shall determine the occupancy limits established by Paragraph (I)(1), below. If no such permit exists, the applicant shall provide a statement from a qualified licensed professional attesting to the adequacy of the system to accommodate the maximum number of guests permissible under these regulations or provide evidence that the septic system has been pumped out within one year prior to the date of application.
 - (7) If the property is served by the Town's sewer system, a certificate from a qualified licensed professional that the connection to the Town's system is operational and free of detectable leaks.
 - (8) If the residential vacation rental includes the use of a boat on Lake Lure, proof of a valid Town commercial boat license.
 - (9) Proof that the property is registered with the Rutherford County Tourism Development Authority, or, for a new business, that an application has been submitted, and that all room occupancy and tourism development taxes for the prior year have been paid.
 - (10) Certification that the property complies with the Fire Code as adopted by Rutherford County.
 - (11) A copy of the standard rental agreement used for the residential vacation rental which contains information required by this section.
 - (12) Such other information reasonably needed for the Town to make an informed decision on the application.
 - (13) An acknowledgment that the applicant is aware of the occupancy restrictions on the use of the property as a residential vacation rental and the applicant's agreement to abide thereby.
- (E) **Inspections.** In conjunction with an application for a vacation rental operating permit, the Town shall conduct an initial inspection to confirm compliance with the requirements of this section.

- (F) ***Operational Requirements.*** The following operational requirements shall apply to all residential vacation rentals.
- (1) ***Occupancy Limits.*** Occupancy in a residential vacation rental property shall not exceed two persons per bedroom plus two additional persons; provided, however, in the R-1, R-1A, R-1B, R-1C, R-1D, and M-1 Zoning Districts, occupancy shall be the lesser of the total determined by the foregoing formula or twelve persons. Occupancy shall refer to the number of persons on the premises between the hours of 12:00 midnight and 6:00 a.m. Bedrooms used in calculating occupancy limits shall include only those that meet the definitions and standards for habitable bedrooms in the State Building Code.
 - (2) ***Signs.*** In the R-1, R-1A, R-1B, R-1C, R-1D and M-1 zoning districts, residential vacation rental properties shall not have any signs visible from the exterior of the premises which advertise the use of the property as a residential vacation rental, other than as required by this section. In the remaining zoning districts, residential vacation rental properties may have signage as authorized by Article 10 of these regulations.
 - (3) ***Posting Permit.*** Each operator shall affix and maintain a copy of its vacation rental operating permit on the inside of the main entry door of the property to which it applies.
 - (4) ***Display of Contact Information.*** Residential vacation rental operators shall prominently display on the exterior of the residential vacation rental property the name and 24-hour per day, 365 days-per-year telephone number for the residential vacation rental operator who will take and resolve complaints regarding operation of the residential vacation rental property and its occupants and guests. The Town will prescribe the form of this display which shall also include a telephone number to report violations of this section to the Zoning Administrator.
 - (5) ***Parking.*** Occupants or guests of any residential vacation rental property shall not park vehicles on the property other than within parking area(s) designated on the application for the residential vacation rental.

- (6) *Trash Disposal.* Household trash must be bagged and disposed of in trash receptacles. Trash receptacles shall be the size and number authorized by existing refuse contracts, shall be animal-proof, and placed in an enclosed area.
- (7) *Conduct of Occupants & Guests.* Occupants and guests shall conduct themselves in accordance with provisions of this section, the Town Code or any other applicable federal, state, or county statute, ordinance, rule or regulation pertaining to nuisance, noise, disorderly conduct, trespass, illegal consumption of alcohol, or use of illegal drugs.
- (G) *Contract Addendum.* Every residential vacation rental contract shall contain an addendum, in a form prepared by the Town, setting forth the requirements of this section and other applicable provisions of law. The operator shall obtain a signed acknowledgment from the renter(s) that they have received such addendum prior to delivering possession of the residential vacation rental property.
- (H) *Duties of the Operator to Respond to Complaints.* To assure prompt response to complaints and issues concerning a residential vacation rental, the operator shall comply with the following:
 - (1) Maintain a call center that is staffed by a live person and fully responsive 24 hours per day, 365 days per year.
 - (2) Cause a responsible party with decision-making authority to be on-site at the residential vacation rental property within one hour after receipt of a complaint requiring the operator's on-site presence.
 - (3) Continuously maintain on file with the Town the operator's current address, telephone number, and facsimile number and/or email address.
 - (4) Ensure that the occupants and guests of its residential vacation rental property do not violate provisions of this Section, the Town Code or any other applicable federal, state, or county statute, ordinance, rule or regulation pertaining to noise, disorderly conduct, trespass, illegal consumption of alcohol, or use of illegal drugs. An operator shall be deemed to have satisfied this standard if it (1) clearly advises its occupants and guests of such requirements before they take occupancy of the property, (2)

promptly and appropriately responds to complaints concerning the behavior of its occupants and guests, and (3) promptly evicts from the residential vacation rental property any who have failed to comply with any such applicable laws on two or more occasions during their period of occupancy.

SECTION FIVE. Paragraph (B) of Section 92.026 of the Zoning Regulations of the Town of Lake Lure, concerning permitted uses in the R-1 Residential District, is hereby amended to add the following permitted use:

- (4) Residential vacation rentals subject to special requirements contained in §92.042, below.

SECTION SIX. Paragraph (B) of Section 92.028 of the Zoning Regulations of the Town of Lake Lure, concerning permitted uses in the R-1D Residential District, is hereby amended to add the following permitted use:

- (4) Residential vacation rentals subject to special requirements contained in §92.042, below.

SECTION SEVEN. Paragraph (B) of Section 92.029 of the Zoning Regulations of the Town of Lake Lure, concerning permitted uses in the R-2 Residential District, is hereby amended to add the following permitted use:

- (4) Residential vacation rentals subject to special requirements contained in §92.042, below.

SECTION EIGHT. Paragraph (B) of Section 92.030 of the Zoning Regulations of the Town of Lake Lure, concerning permitted uses in the R-3 Resort Residential District, is amended to add the following permitted use:

- (6) Residential vacation rentals subject to special requirements contained in §92.042, below.

SECTION NINE. Paragraph (B) of Section 92.030A of the Zoning Regulations of the Town of Lake Lure, concerning permitted uses in the R-4 Residential / Office District, is amended to add the following permitted use:

- (5) Residential vacation rentals subject to special requirements contained in §92.042, below.

SECTION TEN. Paragraph (B) of Section 92.031 of the Zoning Regulations of the Town of Lake Lure, concerning permitted uses in the C-1 General Commercial District, is amended to add the following permitted use:

- (8) Residential vacation rentals subject to special requirements contained in §92.042, below.

SECTION ELEVEN. Paragraph (B) of Section 92.031A of the Zoning Regulations of the Town of Lake Lure, concerning permitted uses in the CN Commercial Neighborhood District, is amended to add the following permitted use:

- (7) Residential vacation rentals subject to special requirements contained in §92.042, below.

SECTION TWELVE. Paragraph (B) of Section 92.031B of the Zoning Regulations of the Town of Lake Lure, concerning permitted uses in the CTC Commercial Town Center District, is amended to add the following permitted use:

- (11) Residential vacation rentals subject to special requirements contained in §92.042, below.

SECTION THIRTEEN. Paragraph (B) of Section 92.031C of the Zoning Regulations of the Town of Lake Lure, concerning permitted uses in the CG Commercial General District, is amended to add the following permitted use:

- (9) Residential vacation rentals subject to special requirements contained in §92.042, below.

SECTION FOURTEEN. Paragraph (B) of Section 92.034 of the Zoning Regulations of the Town of Lake Lure, concerning permitted uses in the S-1 Scenic Natural Attraction District, is amended to add the following permitted use:

- (5) Residential vacation rentals subject to special requirements contained in §92.042, below.

SECTION FIFTEEN. Paragraph (C) of Section 92.029 of the Zoning Regulations of the Town of Lake Lure, concerning conditional uses in the R-2 General Residential District, is amended to strike the following conditional use:

- ~~(1) Boarding and rooming houses, non-profit retreats and non-profit lodges with eating facilities for clientele only.~~

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SECTION SIXTEEN. Paragraph (B) of Section 92.033 of the Zoning Regulations of the Town of Lake Lure, concerning permitted uses in the M-1 Reserved Mountainous District, is amended to add the following permitted use:

- (3) Residential vacation rentals subject to special requirements contained in §92.042, below.

SECTION SEVENTEEN. The Community Development Director shall conduct ongoing studies of the effects of the regulatory program contained in this Ordinance and the impacts of residential vacation rentals on the residential zoning districts. These formal studies shall include, at a minimum, the following: (1) a comparative analysis of the number of complaints registered with the Town for residences used as residential vacation rentals and those not being so used; and (2) an analysis of the number of complaints against residential vacation rentals as a function of the total number of residential vacation rentals operating in the Town.

SECTION EIGHTEEN. In administering this Ordinance, the Town shall have all the remedies and enforcement powers contained in Article 13 of the Zoning Regulations, as supplemented herein, and as provided by the General Statutes.

SECTION NINETEEN. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION TWENTY. If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

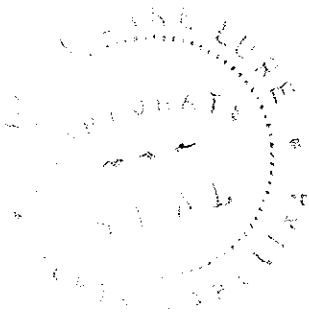
SECTION TWENTY-ONE. The enactment of this ordinance shall in no way affect the running of any amortization provisions or enforcement actions, or otherwise cure any existing zoning violations.

SECTION TWENTY-TWO. This ordinance shall be in full force and effect from and after 1 January, 2010.

Adopted this 13th day of October, 2009.

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ATTEST:



Mary A. Flack, MMC
Town Clerk

Jim Proctor
Mayor

Approved as to content and form:

J. Christopher Callahan
Town Attorney