



# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

## COMMISSION MEMORANDUM

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: December 11, 2013

SUBJECT: **REFERRAL TO THE PLANNING BOARD – AN ORDINANCE AMENDING THE CODE OF THE CITY OF MIAMI BEACH, SUBPART B, ENTITLED “LAND DEVELOPMENT REGULATIONS,” OF CHAPTER 142, ENTITLED “ZONING DISTRICTS AND REGULATIONS,” BY AMENDING ARTICLE II, ENTITLED “DISTRICT REGULATIONS,” BY AMENDING DIVISION 2, ENTITLED “RS-1, RS-2, RS-3, RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICTS,” BY AMENDING SECTION 142-109, ENTITLED “COMMERCIAL USE OF SINGLE-FAMILY HOMES PROHIBITED,” BY AMENDING THE DEFINITIONS THEREIN, AND BY ADDING NEW SUBSECTION (C)(1) D, WHICH PROHIBITS ADVERTISING OF UNLAWFUL OCCUPANCY AND USE; BY AMENDING SUBSECTION (C)(2), WHICH REMOVES THE LIMITATIONS ON ENFORCEMENT; BY AMENDING ARTICLE IV, ENTITLED “SUPPLEMENTARY DISTRICT REGULATIONS,” BY AMENDING DIVISION 2, ENTITLED “ACCESSORY USES”; BY AMENDING SECTION 142-905, ENTITLED “PERMITTED ACCESSORY USES IN SINGLE-FAMILY DISTRICTS,” BY ADDING NEW SUBSECTION (B)(5)A WHICH PROHIBITS THE ADVERTISEMENT FOR THE LEASE OF SINGLE FAMILY HOMES FOR LESS THAN SIX MONTHS AND ONE DAY, BY ADDING NEW SUBSECTION (B)(5)B, WHICH PROVIDES THE ENFORCEMENT FOR A VIOLATION OF SECTION (B)(5); BY AMENDING ARTICLE IV, ENTITLED “SUPPLEMENTARY DISTRICT REGULATIONS,” BY AMENDING DIVISION 3, ENTITLED “SUPPLEMENTARY USE REGULATIONS,” BY AMENDING SECTION 142-1111, ENTITLED “SHORT-TERM RENTAL OF APARTMENT UNITS OR TOWNHOMES,” BY AMENDING SECTION (A) TO PROHIBIT THE ADVERTISEMENT OF SHORT TERM RENTAL OF APARTMENT UNITS OR TOWNHOMES; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

### ADMINISTRATION RECOMMENDATION

Refer an Ordinance Amendment to the Planning Board for consideration and recommendation.

### KEY INTENDED OUTCOME SUPPORTED

1. Increase satisfaction with neighborhood character.
2. Increase resident satisfaction with level of code enforcement.
3. Ensure compliance with code within reasonable time frame.

### INTRODUCTION

The request to refer the discussion regarding the amendment of City Code as it pertains to prohibiting the advertisement of unlawful occupancy and use of illegal short-term rentals was sponsored by Commissioner Tobin, and was made on May 20, 2013 at the Neighborhood and Community Affairs Committee (NCAC). The item was discussed, and committee members provided direction to staff to prepare a recommendation to the full Commission for consideration and subsequent referral to the Planning Board; who in turn will review the proposed

Agenda Item C4I

Date 12-11-13

amendments of the Land Development Regulations (LDR) and recommend to the Mayor and Commission whether the proposed amendments should be approved or denied.

### **BACKGROUND**

Illegal short-term rentals and unauthorized transient use in residentially zoned areas has been an ongoing challenge for the City, its residents, and the Code Compliance Division (Code). The concern has been that the increasing number of illegal and unauthorized short-termed rentals is oftentimes accompanied by other code violations, i.e. commercial use, noise, sanitation violations, and property maintenance issues; all of which adversely impact the quality of life and character of our City's neighborhoods.

In November 2012, Code established a Short-Term Rental Team (STRT) composed of Code Compliance Officers (CCOs) from each of the major Districts (South, Middle, North zone boundaries, and the Afternoon and Evening Shifts). The focus of the STR team is to address the increasing number of unauthorized and illegal short-term rentals within residentially zoned areas.

Since November 2012 to October 2013 (12 month period), Code's STR team has received 265 complaints, has opened and investigated more than 300 cases, has issued 189 Notices of Violations, of which 153 (81%) have been upheld and adjudicated guilty at Special Master Hearings. This information is of utmost importance as STR investigations require a "clear and convincing" level of evidence in order to obtain an adjudication of guilt. It is also important to denote that of the 153 adjudicated cases, 28 (18.3%) have been adjudicated as repeat violators.

One of the challenges faced by Code staff has been the level of proof required by the Special Master; where the advertisement of the illegal short-term rental may only be used as part of the body of evidence to adjudicate illegal short-term rentals. The administration believes that making the advertisement illegal provides another tool to address this violation.

### **COMMITTEE DISCUSSION**

The NCAC discussed this matter at their May 20, 2013 meeting. The Committee discussed how this amendment would allow the City to more effectively address illegal short-term rentals by making it illegal to advertise on the internet or print media for the rental of a property in a residentially zoned area where it is prohibited by the City's Zoning Code. This provides another tool by which Code can further identify and present evidence so as to reduce the number of transient use violations.

A motion was made by Commissioner Tobin and unanimously approved by the Committee, who directed the administration to prepare support documentation and place the item on the City Commission agenda for discussion.

### **ANALYSIS**

The issues and impact regarding illegal short-term rentals have been discussed multiple times, not only at NCAC, but also at the Land Use and Development Committee (LUDC). Part of the concern is that along with the increasing number of unauthorized and illegal short-term rentals, there are many other code violations which adversely impact the quality of life and character of our neighborhoods. The development of an STR Team by Code was only one of many steps taken by Administration. For example, Code and Planning Department staff also met with a number of community leaders and activists from various neighborhoods (including the Flamingo Historic District Association), to develop other methods to educate the public.

These efforts have included aggressive outreach and educational campaigns regarding the regulations and processes governing short-term rentals for multi-family units. Multiple articles regarding short-term rental restrictions have been and will continue to be highlighted in the City's MB Magazine, and information in the City's website to inform and educate businesses, residents and potential visitors regarding short-term rental restrictions. In addition, programs and public service announcements (PSAs) have been developed and aired through the City's Channel 77.

Notwithstanding these efforts, there is a continued illegal use of residential properties for transient and short-term rentals. The administration recommends a fine schedule that mirrors that of the current ordinance. That is: for an advertisement of a single family home or a multi-family home where prohibited, \$1,500 for the first violation; \$3,000 for a second violation within the preceding 12 months; \$5,000 for a third violation within the preceding 12 months; and \$7,500 for a fourth or greater violation within the preceding 12 months. In addition, for a fifth violation, and in addition to the monetary fine, the suspension or revocation of the Certificate of Use (C.U.) and/or Certificate of Occupancy (C.O.).

For the advertisement of a commercial use, as reflected in 142-109, the recommended penalties are \$2,500 for first offense of an advertisement for the commercial use of a residential property; followed by \$7,500 for a second offense within the preceding 18 months, \$12,500 for a third violation within the preceding 18 months; and \$20,000 for a fourth or subsequent violation.

**CONCLUSION**

The Administration recommends that the Mayor and the City Commission refer the attached Ordinance Amendment to the Planning Board for consideration and recommendation.

Attachment:

Ordinance Amending LDR

  
JLM/JMJ/HC/RSA

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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, SUBPART B, ENTITLED "LAND DEVELOPMENT REGULATIONS," OF CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," BY AMENDING ARTICLE II, ENTITLED "DISTRICT REGULATIONS," BY AMENDING DIVISION 2, ENTITLED "RS-1, RS-2, RS-3, RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICTS," BY AMENDING SECTION 142-109, ENTITLED "COMMERCIAL USE OF SINGLE-FAMILY HOMES PROHIBITED," BY AMENDING THE DEFINITIONS THEREIN, AND BY ADDING NEW SUBSECTION (c)(1)d, WHICH PROHIBITS ADVERTISING OF UNLAWFUL OCCUPANCY AND USE; BY AMENDING SUBSECTION (c)(2), WHICH REMOVES THE LIMITATIONS ON ENFORCEMENT; BY AMENDING ARTICLE IV, ENTITLED "SUPPLEMENTARY DISTRICT REGULATIONS," BY AMENDING DIVISION 2, ENTITLED "ACCESSORY USES"; BY AMENDING SECTION 142-905, ENTITLED "PERMITTED ACCESSORY USES IN SINGLE-FAMILY DISTRICTS," BY ADDING NEW SUBSECTION (b)(5)a WHICH PROHIBITS THE ADVERTISEMENT FOR THE LEASE OF SINGLE FAMILY HOMES FOR LESS THAN SIX MONTHS AND ONE DAY, BY ADDING NEW SUBSECTION (b)(5)b, WHICH PROVIDES THE ENFORCEMENT FOR A VIOLATION OF SECTION (b)(5); BY AMENDING ARTICLE IV, ENTITLED "SUPPLEMENTARY DISTRICT REGULATIONS," BY AMENDING DIVISION 3, ENTITLED "SUPPLEMENTARY USE REGULATIONS," BY AMENDING SECTION 142-1111, ENTITLED "SHORT-TERM RENTAL OF APARTMENT UNITS OR TOWNHOMES," BY AMENDING SECTION (A) TO PROHIBIT THE ADVERTISEMENT OF SHORT TERM RENTAL OF APARTMENTS UNITS OR TOWNHOMES; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

**WHEREAS**, the Land Development Regulations ("LDRs") restrict single-family and multi-family residential properties to residential and compatible uses; and

**WHEREAS**, the City's "LDRs" restrict certain residential properties to residential and compatible accessory uses, and commercial uses on such properties are prohibited, except that the LDRs allow film and print permits, garage sales and home based businesses at such properties; and

**WHEREAS**, the rental of single-family residential properties in districts zoned RS-1, RS-2, RS-3 and RS-4 ("Single Family Residential Homes") for periods of less than six months and one day ("Seasonal Rentals") is prohibited; and

**WHEREAS**, the Code Compliance Division has reported numerous instances of residential properties being advertised as party houses, and where the house is used for a commercial enterprise for parties instead of as a single family residential use; and

**WHEREAS**, single and multi-family residences used on a transient basis, or other form of commercial gathering, creates excessive numbers of guests, vehicles and noise, causing inappropriate adverse impacts on the surrounding residences and residential neighborhood; and

**WHEREAS**, the City has a substantial interest in maintaining the aesthetics, character and tranquility of its residential neighborhoods, as well as in regulating traffic flow; this ordinance directly advances these interests; and this ordinance is narrowly tailored to serve those interests; and

**WHEREAS**, the advertisement of commercial events and transient occupancy of single and multi-family residences are more appropriately held in the zoning districts that are designed for such numbers of persons, with the impacts resulting therefrom more appropriately mitigated; and

**WHEREAS**, while residents are entitled to enjoy the use of their single and multi-family residences consistent with the applicable regulations in the residential zoning districts, in order to ensure and protect the enjoyment, character and value of the residential neighborhoods and residences, the provisions herein are hereby adopted; and

**WHEREAS**, the City Commission finds that such regulations are consistent with and further the public health, safety and welfare of the City; and

**WHEREAS**, these amendments regarding provisions herein regarding commercial use of single-family homes prohibited, permitted accessory uses in single-family districts and short term rental of apartment units or townhomes, are hereby adopted to accomplish the above objectives.

**NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:**

**SECTION 1.** That Division 2, entitled "RS-1, RS-2, RS-3, RS-4 Single-Family Residential Districts," of Article II, entitled "District Regulations," of Chapter 142, entitled "Zoning Districts and Regulations," of the Code of the City of Miami Beach, Florida is hereby amended as follows:

**CHAPTER 142**

**ZONING DISTRICTS AND REGULATIONS**

\* \* \*

**Article II. District Regulations**

\* \* \*

**Division 2. RS-1, RS-2, RS-3, RS-4 Single-Family Residential Districts**

\* \* \*

**Sec. 142-109. Commercial use of single-family homes prohibited.**

- (a) Intent and purpose: The land development regulations restrict residential properties to residential and compatible accessory uses. Commercial uses on residential properties are prohibited, with limited exceptions. While residents are entitled to enjoy the use of their property consistent with the applicable regulations, in order to ensure and protect the enjoyment, character and value of residential neighborhoods and buildings, the provisions herein are established.
- (b) Definitions:
- (1) "Use of residential property" or "use of the property" in this section shall mean occupancy of residential property for the purpose of holding commercial parties, events, assemblies or gatherings on the premises.
- (2) "Advertising" or "advertisement" shall mean any form of communication for marketing or used to encourage, persuade, or manipulate viewers, readers or listeners for the purpose of promoting occupancy of a residential property for the purpose of holding commercial parties, events, assemblies, gatherings, or the transient occupancy upon the premises, as may be viewed through various traditional media, including but not limited to, newspaper, magazines, television commercial, radio advertisement, outdoor advertising, direct mail, blogs, websites or text messages.
- (c) Regulations: Determination of commercial use.
- (1) Accessory use of residential property shall be deemed commercial and not permitted, except as otherwise provided for in the Code, if:
- a. Compensation to owner. The owner, lessee or resident receives payment or other consideration, e.q., goods, property or services, in excess of \$100 per party or event for the commercial use of the property, including payment by any means, direct or indirect, including security deposits; or
  - b. Goods, property or services offered or sold. Goods, property or services are offered for sale or sold on or at the property, during use of the property; however, this subsection shall not apply, if:
    1. All of the goods, property or services offered are donated to or for charitable, religious or political organizations or candidates for public office, that have received 501(c)(3) or other tax exempt status under the U.S. Internal Revenue Code, as amended, or in accordance with applicable election laws; or
    2. All of the proceeds from sales are directly payable and paid to charitable, religious or political organizations or candidates for public office, that have received 501(c)(3) or other tax exempt status under the U.S. Internal Revenue Code, as amended, or in accordance with applicable election laws. An organization or candidate may reimburse donors for goods or property donated; or
    3. The sale is of the property itself or personal property of the owner or resident (excluding property owned by a

business), and if publicly advertised, comply with subsection (3) below.

4. Notwithstanding the restrictions in subsections (1)b.1.—3., limited commercial use of the property by the owner or resident for the sale of goods, property or services shall be allowed under the following criteria. The event:

- i. Is by private invitation only, not publicly advertised;
  - ii. Creates no adverse impacts to the neighborhood;
  - iii. The activity and its impacts are contained on the property;
  - iv. Parking is limited to that available on-site, plus 11 vehicles legally self-parked near the property, with no busing or valet service; and
  - v. Frequency is no greater than one event per month;
- or

c. Admittance fees. Use of the property by attendees requires an admittance or membership fee or a donation, excluding donations directly payable and paid by attendees to charitable, religious or political organizations or candidates for public office, that have received 501(c)(3) or other tax exempt status under the U.S. Internal Revenue Code, as amended, or in accordance with applicable election laws; or

d. Any advertising that promotes the occupancy or use of the residential property for the purpose of holding commercial parties, events, assemblies, gatherings, or the transient occupancy or use of the residential premises in violation of this ordinance.

(2) Signs or advertising. Signs or other forms of advertising in connection with goods, property or services offered in connection with commercial use of the property, including the actual goods, property (except real property and structures thereon) or services, shall not be visible from the public right-of-way. This section shall not be construed to prohibit the display of real estate for sale or lease signs for the property. ~~Advertising that promotes activities that violate this section shall be deemed a violation of the section, with such violations determined per event and not per advertisement.~~

(3) Real estate open houses. The following events are permitted: Open houses (open to the public) organized for the purpose of promoting the sale or lease of the residence where the open house is located, to potential buyers or renters, or events organized by the listing agent limited to licensed real estate brokers and/or agents, subject to the following:

- a. No sale or display of goods, property or services by sponsoring businesses unrelated to the property; and
- b. No charging admittance fees.
- c. Events described in this subsection must end by 8:00 p.m.

(d) Enforcement:

(1) Violations of this section shall be subject to the following fines. The special master may not waive or reduce fines set by this section.

- a. If the violation is the first violation .....\$ 2,500.00
- b. If the violation is the second violation within the preceding 18 months .....7,500.00

- c. If the violation is the third violation within the preceding 18 months .....12,500.00
  - d. If the violation is the fourth or greater violation within the preceding 18 months .....20,000.00
- Fines for repeat violations shall increase regardless of location.
- (2) In addition to or in lieu of the foregoing, the city may close down the commercial use of the property and/or seek an injunction against activities or uses prohibited under this section.
  - (3) Any city police officer or code compliance officer may issue notices for violations of this section, with alternative enforcement as provided in section 1-14 and chapter 30 of this Code. Violations shall be issued to the homeowner, and/or to any realtor, real estate agent, real estate broker, event planner, promoter, caterer, or any other individual or entity that facilitates or organizes the prohibited activities. In the event the record owner of the property is not present when the violation occurred, a copy of the violation shall be provided to such owner.
  - (4) Charitable, religious or political organizations or candidates for public office shall receive one courtesy notice in lieu of the first notice of violation only, after which fines will accrue starting with the first violation as prescribed. No courtesy notice in lieu of first notice of violation shall be available if a courtesy notice in lieu of first notice of violation has already been granted in the preceding 18-month period, regardless of location.
  - (5) The city recognizes peoples' rights of assembly, free expression, religious freedom, and other rights provided by the state and federal constitutions. It is the intent of the city commission that no decision under this section shall constitute an illegal violation of such rights, and this section shall not be construed as such a violation.
  - (6) The city manager or designee may adopt administrative rules and procedures to assist in the uniform enforcement of this section.
- (e) No variances shall be granted from this section. This section does not authorize commercial activities in residential neighborhoods that are otherwise prohibited or regulated by applicable law, unless expressly provided for herein.

**SECTION 2.** That Division 2, entitled "Accessory Uses," of Article IV, entitled "Supplementary District Regulations," of Chapter 142, entitled "Zoning Districts and Regulations," of the Code of the City of Miami Beach, Florida is hereby amended as follows:

**Chapter 142**

**ZONING DISTRICTS AND REGULATIONS**

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**ARTICLE IV. SUPPLEMENTARY DISTRICT REGULATIONS**

\* \* \*

**DIVISION 2. ACCESSORY USES**

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**Sec. 142-905. Permitted accessory uses in single-family districts.**

- (a) Generally. Permitted accessory uses in single-family districts are those uses which are customarily associated with single-family houses such as but not limited to decks, swimming pools, spas, ornamental features, tennis courts. However, in no instance shall landing or storage areas for a helicopter, or other aircraft, be permitted as an accessory use. The planning and zoning director may allow other accessory uses if the director finds after consultation with the chairman of the planning board that they will not adversely affect neighboring properties, based upon the criteria listed in section 142-901. Appeal of the director's decision is to the board of adjustment pursuant to chapter 118, article VIII.
- (b) Permitted accessory uses. The following are permitted accessory uses in single-family districts:
  - (1) Day care facilities for the care of children are permitted if the following mandatory criteria are met:
    - a. A family day care facility shall be allowed to provide care for one of the following groups of children:
      - 1. A family day care home may care for a maximum of five preschool children from more than one unrelated family and a maximum of five elementary school siblings of the preschool children in care after school hours. The maximum number of five preschool children includes preschool children in the home and preschool children received for day care who are not related to the resident caregiver. The total number of children in the home may not exceed ten under this subsection.
      - 2. When the home is licensed and provisions are made for substitute care, a family day care home may care for a maximum of five preschool children from more than one unrelated family, a maximum of three elementary school siblings of the preschool children in care after school hours, and a maximum of two elementary school children unrelated to the preschool children in care after school hours. The maximum number of five preschool children includes preschool children in the home and preschool children received for day care who are not related to the resident caregiver. The total number of children in the home may not exceed ten under this subsection.
      - 3. When the home is licensed and provisions are made for substitute care, a family day care home may care for a maximum number of seven elementary school children from more than one unrelated family in care after school hours. Preschool children shall not be in care in the home. The total number of elementary school children in the home may not exceed seven under this subsection.
    - b. Signs on the property advertising the day care facility are prohibited.
    - c. The family day care facility complies with all applicable requirements and regulations of the state department of children

and family services and the city's police, fire and building services departments. All of the South Florida Building Code, city property maintenance standards and fire prevention and safety code violations shall be corrected prior to the issuance of a city occupational license.

- d. Play area shall only be located in the rear yard and equipment shall be limited to three pieces of equipment.
  - e. Day care is prohibited on Sundays.
  - f. The building shall maintain the external appearance of a single-family home.
  - g. Site plan shall be approved by the planning and zoning director. The plan shall include landscaping and a permitted wall or fencing enclosing the rear yard.
  - h. Family day care facilities shall not be located within 400 feet of another such facility; except that this restriction shall not apply to state-licensed family day care homes as defined in F.S. § 402.302(5).
- (2) The planning and zoning director may approve a second set of cooking facilities if the residence contains at least 3,600 square feet of floor area and the arrangement of such facilities or conditions at the property shall not result in the creation of an apartment unit. No more than one electric meter shall be placed on the property and that portion of the residence having the second set of cooking facilities shall not be rented. Appeal of the director's decision shall be to the board of adjustment.
- (3) Guest/servants quarters.
- (4) Home based business office, as provided in section 142-1411.
- (5) Leases of single-family homes to a family (as defined in section 114-1) for not less than six months and one day, including extensions for lesser periods of leases permitted under this subsection to original leaseholders.
- a. The advertisement, as defined in Section 142-109(b), of single-family homes for a period of less than six months and one day shall not be permitted for single-family districts, and must be a violation of Section 142-905(b)(5).
  - b. Enforcement.
    - (1) Violations of subsection 142-905(5)a shall be subject to the following fines. The special master may not waive or reduce fines set by this section.
      - a. If the violation is the first violation: \$1,500.00.
      - b. If the violation is the second violation within the preceding 12 months: \$3,000.00.
      - c. If the violation is the third violation within the preceding 12 months: \$5,000.00.
      - d. If the violation is the fourth violation within the preceding 12 months: \$7,500.00.
      - e. If the violation is the fifth or greater violation within the preceding 12 months: suspension or revocation of the certificate of use or occupancy must be imposed, in addition to the monetary fine of \$7,500.00.
- Fines for repeat violations by the same offender shall increase regardless of locations.

- (2) In addition to or in lieu of the foregoing, the city may seek an injunction by a court of competent jurisdiction to enforce compliance with or to prohibit the violation of this section.
- (3) Any code compliance officer may issue notices for violations of this section, or subsection 142-905(5)a. Violations shall be issued to the owner, manager, real estate broker or agent, or authorized agent, or any other individual or entity that participates in or facilitates the violation of subsection 142-905(5) or subsection 142-905(5)a. In the event the record owner of the property is not present when the violation occurred or notice of violation issued, a copy of the violation shall be served by certified mail on the owner at its mailing address in the property appraiser's records.

**SECTION 3.** That Division 3, entitled "Supplementary Use Regulations," of Article IV, entitled "Supplementary District Regulations," of Chapter 142, entitled "Zoning Districts and Regulations," of the Code of the City of Miami Beach, Florida is hereby amended as follows:

**Chapter 142**

**ZONING DISTRICTS AND REGULATIONS**

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**ARTICLE IV. SUPPLEMENTARY DISTRICT REGULATIONS**

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**DIVISION 3. SUPPLEMENTARY USE REGULATIONS**

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**Sec. 142-1111. Short-term rental of apartment units or townhomes.**

(a) {Limitations and Prohibitions.}

- (1) The rental of apartment or townhome residential properties in districts zoned RM-1, RM-PRD, RM-PRD-2, RPS-1 and RPS-2, CD-1, RO, RO-3 or TH for periods of less than six months and one day, unless expressly provided for in these land development regulations (such as for a portion of the RM-1 district, and for apartment hotels in the RPS-1 and RPS-2 districts) are not a permitted use in such districts unless conducted in accordance with this section.
- (2) Any advertising or advertisement that promotes the occupancy or use of the residential property for the purpose of holding commercial parties, events, assemblies, gatherings, or the transient occupancy or use of the residential premises in violation of this ordinance.
  - a. "Advertising" or "advertisement" shall mean any form of communication for marketing or used to encourage, persuade, or

manipulate viewers, readers or listeners for the purpose of promoting occupancy of a residential property for the purpose of holding commercial parties, events, assemblies, gatherings, or the transient occupancy upon the premises, as may be viewed through various traditional media, including but not limited to, newspaper, magazines, television commercial, radio advertisement, outdoor advertising, direct mail, blogs, websites or text messages.

- (b) Previously existing short-term rentals in specified districts. For a period of six months after the effective date of the ordinance enacting this section (June 19, 2010), owners of certain properties located in the following districts shall be eligible to apply for approval of a certificate of use permitting short-term rental of apartment and townhome residential units for these properties under the requirements and provisions set forth below. Other neighborhoods may be added to this provision in the future by action of the city commission.

Districts: Properties within the RM-1 and TH zoning districts in the Flamingo Park and Espanola Way Historic Districts.

Eligibility: Those properties that can demonstrate a current and consistent history of short-term renting, and that such short-term rentals are the primary source of income derived from that unit or building, as defined by the requirements listed below.

- (1) For apartment buildings of four or more units, or for four or more apartment units in one or more buildings under the same resort tax account.

In order to demonstrate current, consistent and predominant short-term renting, the property must comply with all of the following:

- a. Have been registered with the city for the payment of resort tax and made resort tax payments as of March 10, 2010; and
- b. Have had City of Miami Beach Resort Tax taxable room revenue equal to at least 50 percent of total room revenue over the last two-year period covered by such payments; and
- c. Have been registered, with the State of Florida as a transient apartment or resort condominium pursuant to Chapter 509, Florida Statutes, as of March 10, 2010.

For properties containing more than one apartment building, eligibility may apply to an individual building satisfying a. through c. above.

- (2) For apartment and townhouse buildings of three or less units, or for three or less apartment units in one or more buildings under the same state license:

In order to demonstrate current, consistent and predominant short-term renting, the property must:

- a. Have been registered with the State of Florida as a resort dwelling or resort condominium pursuant to Chapter 509, Florida Statutes, as of March 10, 2010.

- (c) Time periods to apply for short-term rental approvals.

- (1) Owners demonstrating compliance with subsections (b)(1) or (2) above, shall apply for a certificate of use permitting short-term rental as detailed in subsection 142-1111(d) within a time period of six months from the effective date of this section (June 19, 2010), or be deemed ineligible to proceed through the process specified herein for legalization of short-term rentals.

- (2) Within three months of the effective date of the ordinance enacting this section (June 19, 2010), eligible owners shall apply to obtain all necessary approvals to comply with the Florida Building Code, Florida Fire Prevention Code and with all other applicable life safety standards.
  - (3) Compliance with the applicable requirements of the Florida Building Code and Florida Fire Prevention Code, shall be demonstrated by October 1, 2011, or rights to engage in short-term rental under this section shall be subject to restrictions and/or limitations as directed by the building official and/or fire marshal. This subsection shall not prevent these officials from undertaking enforcement action prior to such date.
  - (4) Applications under this ordinance may be accepted until 60 days after adoption of this subsection (adopted on April 11, 2012; 60 days expire June 11, 2012), upon determination to the planning director that a government licensing error prevented timely filing of the application.
- (d) Regulations. For those properties eligible as per (b) above, unless otherwise expressly provided for in these land development regulations, short-term rental of apartment and townhome residential units shall be permitted, provided that the following mandatory requirements are followed:
- (1) Approvals required: applications. Owners, lessees, or any person with interest in the property seeking to engage in short-term rental, must obtain a certificate of use permitting short-term rental under this section. The application for approval to engage in short-term rentals shall be on a form provided for that purpose, and contain the contact information for the person identified in subsection (3) below, identify the minimum lease term for which short-term rental approval is being requested, and such other items of required information as the planning director may determine. The application shall be accompanied by the letter or documents described in subsection (9) below, if applicable.  
The application for a certificate of use permitting short-term rentals shall be accompanied by an application fee of \$600.00.
  - (2) Time period. All short-term rentals under this section must be pursuant to a binding written agreement, license or lease. Each such document shall contain, at a minimum: the beginning and ending dates of the lease term; and each lessee's contact information, as applicable. No unit may be rented more frequently than once every seven days.
  - (3) Contact person. All rentals must be supervised by the owner, manager, or a local and licensed real estate broker or agent or other authorized agent licensed by the city, who must be available for contact on a 24-hour basis, seven days a week, and who must live on site or have a principal office or principal residence located within the Flamingo Park or Espanola Way historic districts. Each agreement, license, or lease, of scanned copy thereof, must be kept available throughout its lease term and for a period of one year thereafter, so that each such document and the information therein, is available to enforcement personnel. The name and phone number of a 24-hour contact shall be permanently posted on the exterior of the premises or structure or other accessible location, in a manner subject to the review and approval of the city manager or designee.
  - (4) Entire unit. Only entire apartment units and townhomes, as defined in section 114-1, legally created pursuant to applicable law, may be rented under this section, not individual rooms or separate portions of apartment units or townhomes.

- (5) Rules and procedures. The city manager or designee may adopt administrative rules and procedures, including, but not limited to, application and permit fees, to assist in the uniform enforcement of this section.
  - (6) Signs. No signs advertising the property for short-term rental are permitted on the exterior of the property or in the abutting right-of-way, or visible from the abutting public right-of-way.
  - (7) Effect of violations on licensure. Approvals shall be issued for a one-year period, but shall not be issued or renewed if violations on three or more separate days at the unit, or at another unit in the building owned by the same owner or managed by the same person or entity, of this section, issued to the short-term rental licensee were adjudicated either by failure to appeal from a notice of violation or a special master's determination of a violation, within the 12 months preceding the date of filing of the application.
  - (8) Resort taxes. Owners are subject to resort taxes for rentals under this section, as required by city law.
  - (9) Association rules. Where a condominium or other property owners association has been created that includes the rental property, a letter from the association dated not more than 60 days before the filing of the application, stating the minimum rental period and the maximum number of rentals per year, as set forth under the association's governing documents, and confirming that short-term rentals as proposed by the owner's application under subsection (1) above are not prohibited by the association's governing documents, shall be submitted to the city as part of the application. If the applicant, after best efforts, is unable to obtain such a letter from the association, he or she may submit the latest version of the association's documents to the city attorney's office for confirmation of the above.
  - (10) Variances. No variances may be granted from the requirements of this section.
- (e) Enforcement.
- (1) Violations of section 142-1111(a) or (b) shall be subject to the following fines. The special master may not waive or reduce fines set by this section.
    - a. If the violation is the first violation: \$500.00.
    - b. If the violation is the second violation within the preceding 12 months: \$1,500.00.
    - c. If the violation is the third violation within the preceding 12 months: \$5,000.00.
    - d. If the violation is the fourth violation within the preceding 12 months: \$7,500.00.
    - e. If the violation is the fifth or greater violation within the preceding 12 months: suspension or revocation of the certificate of use allowing short-term rental.
 Fines for repeat violations by the same offender shall increase regardless of locations.
  - (2) In addition to or in lieu of the foregoing, the city may seek an injunction by a court of competent jurisdiction to enforce compliance with or to prohibit the violation of this section.

- (3) Any code compliance officer may issue notices for violations of this section, with enforcement of subsection 142-1111(a) and alternative enforcement of subsection 142-1111(b) as provided in chapter 30 of this Code. Violations shall be issued to the owner, manager, real estate broker or agent, or authorized agent, or any other individual or entity that participates in or facilitates the violation of this section. In the event the record owner of the property is not present when the violation occurred or notice of violation issued, a copy of the violation shall be served by certified mail on the owner at its mailing address in the property appraiser's records and a courtesy notice to the contact person identified in subsection (d)(3) above.

**SECTION 4. REPEALER.**

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

**SECTION 5. SEVERABILITY.**

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

**SECTION 6. CODIFICATION.**

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

**SECTION 7. EFFECTIVE DATE.**

This Ordinance shall take effect the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

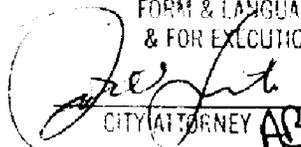
**PASSED and ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**ATTEST:**

\_\_\_\_\_  
MATTI HERRERA BOWER  
MAYOR

\_\_\_\_\_  
RAFAEL E. GRANADO, CITY CLERK

Underline denotes additions and ~~strike through~~ denotes deletions

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION  
  
CITY ATTORNEY **AB** DATE 10/11/13

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