

Condensed Title:

An ordinance amending Chapter 142 Of The City Code, "Zoning Districts And Regulations," by permitting under certain conditions Short Term Rental Of Apartment Units Or Townhomes (for periods of less than six months and one day) in one or more areas of the City zoned RM-1, RM-PRD, RM-PRD-2, RPS-1 and RPS-2, CD-1, RO, RO-3 or TH; and creating a mechanism for properties which have engaged in short term rentals in districts where this is not permitted to be grandfathered-in.

Key Intended Outcome Supported:

Increase satisfaction with neighborhood character; quality of life.

Supporting Data (Surveys, Environmental Scan, etc

64.1% of residents and 68.2% of businesses said the level of code enforcement and ordinances established by the City of Miami Beach government is "about the right amount."

Issue:

Should the City Commission adopt the proposed ordinance which would permit short term rentals in apartments located within areas of the City which currently are zoned to not permit transient rentals?

Item Summary/Recommendation:

FIRST READING

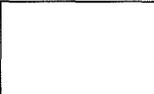
The proposed ordinance would permit short term rentals in multifamily residential zoning districts within the City that currently prohibit hotel and transient uses. The ordinance contains operational requirements which would apply, and would permit such rentals only in areas specified. A "grandfather" clause is also included, which would permit some properties in districts not included in the ordinance, which have been actively engaged in short-term rentals, to be approved by the City.

The Administration recommends that the City Commission approve the Planning Board recommended version of the ordinance upon first reading, and schedule a second reading and public hearing for October 14, 2009. Also recommended is to refer the subject back to the Land Use and Development Committee to explore additional legislation creating separate areas such as Neighborhood Conservation Districts (NCD's) which could permit short term rentals in specific neighborhood areas.

Advisory Board Recommendation:

At the August 25, 2009 meeting the Planning Board recommended that the City Commission adopt the Planning Board recommended version of the proposed ordinance, as amended, by a vote of 6-1.

Financial Information:

Source of Funds:		Amount	Account
<div style="border: 1px solid black; width: 40px; height: 40px; display: flex; align-items: center; justify-content: center;">  </div> OBPI	1		
	2		
	3		
	Total		

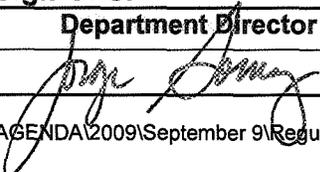
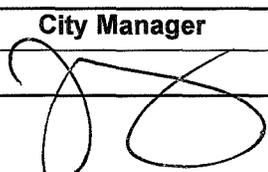
Financial Impact Summary:

In accordance with Charter Section 5.02, which requires that the "City of Miami Beach shall consider the long term economic impact (at least 5 years) of proposed legislative actions," this shall confirm that the City Administration evaluated the long term economic impact (at least 5 years) of this proposed legislative action and determined that the proposed Ordinance may have both positive and negative fiscal impacts.

City Clerk's Office Legislative Tracking:

Jorge Gomez or Richard Lorber

Sign-Offs:

Department Director	Assistant City Manager	City Manager
		

T:\AGENDA\2009\September 9\Regular\Short Term Rental sum.docx





MIAMI BEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 9, 2009

First Reading

SUBJECT: Ordinance - Short term rental of apartment units or townhomes

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142 OF THE CITY CODE, "ZONING DISTRICTS AND REGULATIONS," ARTICLE IV, "SUPPLEMENTARY DISTRICT REGULATIONS," DIVISION 3, "SUPPLEMENTARY USE REGULATIONS," BY CREATING NEW ORDINANCE SECTION 142-1111, "SHORT TERM RENTAL OF APARTMENT UNITS OR TOWNHOMES," PROVIDING FOR REPEALER, NONSEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

ADMINISTRATION RECOMMENDATION

The Administration recommends that the City Commission approve the Planning Board recommended version of the ordinance upon first reading, and schedule a second reading and public hearing for October 14, 2009. The Administration also recommends that the subject be referred back to the Land Use and Development Committee for exploration of possible additional legislation creating individual areas such as Neighborhood Conservation Districts (NCD's) which could permit short term rentals if specific neighborhood areas reached consensus on the idea in future.

BACKGROUND

Consideration of an ordinance regulating short term or seasonal rentals in the multifamily and other zoning districts in the City that prohibit hotel and transient uses was referred to the Land Use and Development Committee and the Planning Board by the City Commission on September 10, 2008, at the request of the City Manager and the City Attorney.

As described in the attached memo dated September 10, 2008, it had come to the City's attention that numerous multifamily building and apartment unit owners are engaged in short term rental of their units, including on a daily or weekly basis. Several of the City's multifamily zoning districts do not allow hotel uses, which uses constitute transient occupancy. Some Commercial, Residential Office and Townhouse districts also do not permit hotel uses. Therefore, hotel and transient uses are prohibited in these zoning districts. Such use can disrupt the residential character of these buildings. When

discovered, the owners are cited by the City for violation of the applicable City Code provisions that prohibit such hotel or transient use.

On September 22, 2008, the Land Use and Development Committee further discussed the issue of short-term rentals in zoning districts which do not permit hotel use, and the history of violations given for unlicensed short term rentals of apartments in these districts. The hearing was lengthy, and much input from interested parties and stakeholders was given. The Administration recommended that the matter be referred to the Planning Board, with any policy direction deemed appropriate. The Committee voted 3-0 to send the matter to the Planning Board for review, with a recommendation to permit minimum one (1) week rentals, with proper licensing. The Administration was instructed to not pursue any violations regarding short term rentals unless they were the result of a complaint received by the City.

ANALYSIS

The City's Land Development Regulations ("LDRs") contain several multiple-family residential zoning districts, most all of which permit various types of apartment dwellings. Each of these different multifamily zoning districts may allow other main permitted uses and accessory uses, in addition to apartment uses, depending on the location and compatibility of each district. For example, within the highest intensity multifamily zoning districts, such as RM-3 and RPS- 4 along the beachfront, hotels are also allowed. In medium intensity districts such as RM-2 and RPS-3, hotels may also be allowed, but with additional restrictions on their accessory uses.

In the lowest intensity multifamily apartment districts, such as RM-1 and RPS-1 and 2, hotels are not permitted. These districts, characterized by low scale apartment buildings such as the Flamingo Park neighborhood, are designed as primarily residential, with little or no commercial main or accessory uses. Therefore, there is a distinction in these areas, which do permit apartment buildings, but do not permit hotels.

In past years, the line between hotels and apartment uses has become blurred, as various forms of ownership and use have proliferated throughout the City's multifamily districts. It has become somewhat common for owners of beachfront condominium units to rent out their units on a short term basis, especially when the unit is a second home and not in use year-round. While the beachfront RM-3 zoning district does permit hotels and would permit short term rental if properly licensed, in many cases these rentals are simply a private transaction, without licensing, resort tax or fire inspections normally associated with hotel use.

These types of short term rental uses are also occurring in other multi-family zoning districts within Miami Beach, including those low-intensity districts which do not permit hotel uses as a main permitted use. In these districts, it is more problematic to permit short term apartment rental, as the use of these apartments on such a short term, transient basis appears to be similar if not identical to the definition of hotel in the City's LDR's, and as such, would not be permitted as a main permitted use where hotels were prohibited.

The LDR's define hotel uses as buildings occupied or intended to be occupied by transient residents, and a hotel unit as intended for rental to transients on a day-to-day, week-to-week, or month-to-month basis. The City Code treats residences leased in the

City for less than six consecutive months and one day as transient occupancy, based in part on the resort tax requirements. Therefore, the City treats the rental of multifamily residential or townhome properties in districts that do not permit hotel uses for periods of less than six months and one day as a transient use and therefore prohibited under existing regulations.

Several violations have been issued for this short term rental activity. As stated above, the Land Use and Development Committee, after discussion, referred to the matter to the Planning Board, with the direction that an ordinance be reviewed that would permit short term rentals in the subject districts, with a minimum duration of one week. The originally proposed ordinance, drafted by the City Attorney's Office would permit such short term rentals, under certain specified conditions and restrictions deemed necessary to protect against adverse external effects of such uses.

PLANNING BOARD DISCUSSIONS

This proposal to permit short term rental of apartment units in districts which do not permit transient uses was discussed at length by the Planning Board at its March 24, 2009, May 26, 2009, July 28th and August 25th meetings. The Planning Board went over the operational aspects and geographic applicability of the proposed ordinance in detail, and adopted a recommended draft ordinance.

OPERATIONAL REGULATIONS

As per the draft ordinance as recommended by the Planning Board, short term rental of apartment (including condominiums) and townhome residential units would be permitted, according to the following rules:

Time period. All short term rentals must be pursuant to a binding written agreement, license or lease for seven (7) or more consecutive days. No unit may be rented more frequently than on a weekly basis.

Family or housekeeping unit. All rentals must be to one family or housekeeping unit (as defined under *family* in section 114-1).

Contact person. All rentals must be supervised by the owner, or a local and licensed real estate broker or agent or an authorized agent licensed by the City, who must be available for contact on a twenty-four hour basis, seven days a week, and who must have a principal office or residence located within the City of Miami Beach. The name and phone number of the emergency contact person must be permanently posted on the exterior of the premises or structure.

Entire unit. Only entire apartment and townhome units, as defined in section 114-1, legally created pursuant to applicable law, may be rented to a family or housekeeping unit, not individual rooms or separate portions of apartments or townhome units.

Rules and Procedures. The city manager or designee will adopt administrative rules and procedures to assist in the uniform enforcement of this ordinance.

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, except for the contact information required to be posted by the ordinance.

Approvals required. Owners will need to obtain a business tax receipt, certificate of use, and certificate of occupancy (required to prove compliance with applicable codes), and provide the contact information to City for the contact person in charge. Approvals will not be issued or renewed if more than two violations at the unit of the noise ordinance, commercial use ordinance, or this ordinance were adjudicated within the preceding 18 months.

Resort taxes. Owners will be subject to resort taxes for rentals.

Association Rules. Where a condominium or other property owners association has been created that includes the rental property, a letter from the association 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 provided herein are not prohibited by the association, must be submitted to the City as part of the application for short term rental approval.

Existing single family structures in the above referenced multifamily zoning districts will be able to engage in rentals in accordance with these regulations, following receipt of proper approvals. Only entire single family structures may be rented under this ordinance, unless in conformity with the requirements of section 142-1401 as an historic bed and breakfast.

Note that this program shall not apply to legal nonconforming apartment buildings within single family zoning districts, which will continue to be governed by the single family zoning district section of the Code. The ordinance also contains the restriction that no variances may be granted to any section of these provisions for short term rentals.

Another important aspect of any consideration of short term rentals in apartment districts is the requirements such rentals will face with regard to fire and building codes. According to an analysis prepared by the Fire Marshall, (see attached), there are differing occupancy categories based upon the number of units to be used for transient occupancy. A building with 16 or fewer units which is to be used for transient rentals is classified as "Lodging", while one with 17 or more units is classified as "Hotel" occupancy. Conversion of apartment units to either lodging or hotel units both require an application for a change of occupancy.

In either case, conversion of apartment units to transient rentals will require building services (utilities, hvac, elevators) to be brought up to current code. Smoke alarms and fire Alarm systems must be provided, stairways must be enclosed, means of primary and secondary escape must be provided, and all doors and locks must also be code compliant. For buildings less than 17 units, a fire sprinkler system must be provided unless the building meets a specific exception (where every sleeping room has door opening directly to the outside).

For building over 16 units, or "hotel" occupancy, a fire sprinkler system must be provided; there is no exception to this rule. This occupancy classification also requires a specific arrangement of means of egress (dead ends, common path of travel, etc.), and the number of exits must be adequate and comply with code. Stairs must have proper

rated enclosure, and the discharge of exits must be adequate and comply with code. The means of egress must be illuminated, and emergency lighting and exit signage must be provided. In short, the steps necessary to comply with the fire and building codes may require a significant degree of effort for the average apartment owner.

Regarding the fines associated with violations of this ordinance, note that the originally proposed fine schedule was taken from the previously approved commercial "party house" ordinance, and reflected the high profitability that these party house uses were known to have. Since violators of that ordinance were known to be able to command several thousand dollars per day for use of the single family homes for commercial uses, the fines were deliberately set to a high level, in order to provide a deterrent factor. However, those involved with short term rentals of apartments have stated that their profitability is much lower, and that they could reasonably expect to garner in the range of \$800 to \$1200 per weeks rental. As the amount of money being charged for such rentals is lower than was typical for commercial party houses, the Planning Board re-analyzed the proposed fine schedule, and lowered it to a level more commensurate with the actual profitability of these rentals.

GEOGRAPHIC APPLICABILITY

The originally proposed ordinance would apply Citywide to properties within the RM-1, RM-PRD, RM-PRD-2, RPS-1 and RPS-2, CD-1, RO, RO-3 and TH districts, which currently do not permit hotel uses. However, the Planning Board had expressed the concern that the various different areas and neighborhoods which would be affected by this proposal throughout the City were of differing character, especially with respect to the variety of factors which could influence the appropriateness of introducing short term rentals and transient uses. Planning Department staff was asked to perform additional research regarding which neighborhoods were more or less suited to this proposal. The Board discussed which areas of the City currently allow some type of transient use, which areas of the City which would be affected by this ordinance, and the percentage of parcels having homestead exemption within these areas.

The data on homestead exemptions showed that certain multifamily apartment areas where current zoning does not permit transient usage contain a high percentage of homesteaded properties (50 percent or more). Since these areas, such as the north half of Belle Isle, the southeast portion of Normandy Isle, and Parkview Island, contain such a high level of homesteaded properties, which presupposes permanent occupancies, the introduction of short term rental into these areas would appear to be inappropriate. By contrast, most of the other multifamily zoning districts which would be affected by this ordinance contain a lesser percentage of homesteaded properties; for example, the RM-1 district in the Flamingo Park Historic District has about 35 percent of its residential units with the homestead exemption. A lower level of homesteaded properties could be taken as a proxy to indicate a greater likelihood of transient residential usage, and may justify the introduction of a short term rental program in those areas. Several of the smaller pockets of multifamily apartment zoning are completely surrounded by single family residential area, and should likewise be considered inappropriate for short term rental use.

Some of the areas which could be part of a short term rental program proposal already allow some type of transient occupancy. The RPS-1 and RPS-2 districts south of Fifth Street already allow Apartment Hotels, and the RM-1 District permits Suites Hotels in the

West Avenue Bay Front Overlay District (West Avenue and Bay Road from 11th Street to 16th Street) and bed and breakfast inns in locally designated historic districts such as Flamingo Park and Collins Waterfront (the area between Pinetree Drive and Lake Pancoast, south of 25th Street).

Planning Department staff presented a draft proposing to limit the proposed short term rental program to zoning districts within the City's designated local historic districts (The RM-1 and TH districts in the Flamingo Park and Collins Waterfront Historic Districts, and the RPS-1 and RPS-2 districts in the Ocean Beach Historic District south of Fifth Street). This proposal was based on several factors. These areas already permit some form of transient occupancy today, and the introduction of short term rentals into such areas may create less negative impacts than in areas with no previous transient occupancies permitted. The proposed areas are located close to large concentrations of existing hotels and tourism activities. Proximity to existing tourist and transient uses could indicate that these areas are most closely related to existing transient and tourist areas, and so could be most appropriate for the introduction of a short term rental program such as that envisaged by the proposed ordinance.

Additionally, limiting the proposed short term rental program to zoning districts within the City's designated local historic districts could become a mechanism to further encourage the adaptive reuse and rehabilitation of existing contributing structures in these areas. The rationale for permitting bed and breakfast inns in these areas was to provide incentives for the adaptive reuse of buildings in those areas, and a similar rationale could be used to bolster the rationale for the introduction of short term rentals within these districts.

Attached is a resolution adopted by the Flamingo Park Neighborhood Association, expressing concern over the proposed ordinance, and recommending that the City retain the existing six-month minimum rental length for apartments in districts which do not allow transient hotel occupancy. The FPNA resolution states that they would not be opposed to grandfathering in existing short term rentals, and recommends the inclusion of Apartment Hotels as a permitted use in the RM-1 district. Finally, it states that if a short term rental program is adopted, then the manager/supervisor should be required to be on-site 24 hours, or within one block of the property.

On July 27, 2009, the Board reviewed the geographical aspects of the ordinance, and went over each area of the City that could be affected by the proposed short term rental program. The Board voted to recommend that the ordinance be applicable to the RM-1 and TH districts within the Flamingo Park and Collins Waterfront Historic Districts, as recommended by staff, but decided not to recommend the RPS-1 and RPS-2 districts in the Ocean Beach Historic District south of Fifth Street for inclusion, in part because these areas already allow apartment hotels, a similar transient use. The Board went through each other area of the City that could be considered, and decided only upon the inclusion of two areas in the North Beach area, the North Shore Triangle and the area east of Tatum Waterway.

However, on August 25, 2009, the Planning Board voted to reconsider the geographic applicability of the ordinance, and remove the Flamingo Park area from the proposal. This was based upon numerous emails from residents of the Flamingo Park area sent to the Board members during the last month, expressing opposition to the extension of short term rentals into their neighborhood.

The final recommendation of the Planning Board regarding the geographic applicability has been incorporated into the attached Planning Board recommended ordinance, and is as follows:

Properties within the RM-1 district located within the Collins Waterfront Historic Districts, or within the RM-1 district located north of 73rd Street and east of Tatum Waterway, or located within the triangle bounded by Indian Creek Drive, Harding Avenue and 71st Street. (see attached graphics for the proposed areas to be included).

Also attached is a second version of the ordinance entitled "Original ordinance – Citywide", which contains all areas of the City which currently don't permit transient occupancies, in case the City Commission decides to broaden the geographic applicability of the proposal to a wider area than the Planning Board version recommends.

GRANDFATHERING

The Planning Board also voted to recommend inclusion of a "grandfather clause" which would apply to apartment buildings in all other zoning districts not recommended for inclusion in the proposed short-term rental ordinance. The Board expressed the desire that those apartment buildings which have been engaged in short-term rentals in the past should be allowed to apply for the approval as envisaged in the ordinance regardless of their location. The concern was to allow those currently engaged in short term rentals to legalize their businesses, while not permitting new short-term rentals in areas not covered by the proposed ordinance.

Planning Department staff has been carefully analyzing Resort Tax data to determine the general level of short term rentals in apartments within districts not permitting transient occupancy by the existing zoning. While all apartments must register with the City for Resort Tax, only those rents received for periods of less than six months, that is, transient or short-term rentals, are non-exempt and trigger the requirement to pay resort tax. While hundreds of apartment buildings throughout the city are registered, only a relatively small number have actually reported significant non-exempt revenue and paid resort tax on those short term rentals (about 20 in Flamingo Park, 5 south of Fifth Street and 5 in Mid and North Beach. It could be expected that many of the accounts paying small amounts of resort tax on non-exempt room revenue are actually paying because of long-term rents which have been broken in less than six months for various reasons. Only those apartments that have been paying a significant amount of resort tax over the past several years, or those whose percentage of non-exempt room revenue is very high compared to overall room revenue could be identified as engaging in short-term rentals as a business.

In response to the Planning Board's request, staff would propose a grandfathering program which would be in effect for a period of one year after the ordinance was passed, giving those who qualify a window of opportunity to apply under the provisions of the ordinance as adopted. In order to qualify, one would have to be registered with the City for Resort Tax as of a particular date in the recent past, in order to prevent new people from registering for the sole reason of taking advantage of this program. Most importantly, to be able to demonstrate ongoing short-term rental activity, staff would suggest meeting a criteria of either (a) taxable room revenue equal to least 50% of total

room revenue over the past two years, or, (b) paid over \$3,000 in Resort Tax room tax over the past eight (8) years. This figure was chosen to distinguish between occasional resort tax payments for leases broken before their term ended, and accounts which evidence regular income from one or more units for short term rental purposes. (Resort tax is 3% of taxable room revenue; the figure of \$3,000 represents \$100,000 in short term revenue rental over the last 8 years or an average of \$12,500 per year. Average 2007 rent in the City was approximately \$850, or just about \$10,000 per year.)

Please note that Resort Tax data is confidential and cannot be released by the City. However, staff research has identified the apartments in the subject districts which have paid resort tax and may reasonably be expected to apply for the proposed program. By far the largest percentage of apartments which have been paying resort tax are located within the Flamingo Park district. These would be covered by the proposed grandfather clause. Similarly, those four or five apartments paying resort tax south of Fifth Street could also take advantage of the provisions which allow apartment hotels. Finally, very few other apartment buildings in other areas, such as North Beach, are paying resort tax on this basis. Therefore, staff's conclusion is that with the areas detailed above included in the ordinance, the grandfather provision would mainly be taken advantage of by properties in the Flamingo Park neighborhood, and after its initial window of opportunity, the program would revert back to applying only to those specified areas delineated in the ordinance.

COMMISSION COMMITTEE ACTION

The item was originally referred to the Planning Board by the Land Use and Development Committee on September 22, 2008. At that time, the Committee voted 3-0 to send the matter to the Planning Board for review, with a recommendation to permit minimum one (1) week rentals, with proper licensing. The Administration was instructed to not pursue any violations regarding short term rentals unless they were the result of a complaint received by the City.

PLANNING BOARD ACTION

At the August 25, 2009 meeting the Planning Board recommended that the City Commission adopt the Planning Board recommended version of the proposed ordinance, as amended, by a vote of 6-1.

FISCAL IMPACT

In accordance with Charter Section 5.02, which requires that the "City of Miami Beach shall consider the long term economic impact (at least 5 years) of proposed legislative actions," this shall confirm that the City Administration evaluated the long term economic impact (at least 5 years) of this proposed legislative action. Determination of the fiscal impact of the proposed ordinance is difficult to quantify, as both negative and positive impacts may be reasonably foreseen. The proposed ordinance, if enacted, would be likely to increase the City's resort tax revenues, as the payment of the proper resort tax is one of the conditions of any short term rentals permitted under the program. However, this may be offset somewhat by additional city staff time required for administering the program, including reviewing and approving the applications required for this program, which have very specific and stringent requirements, as well as code compliance efforts to ensure that the properties undertaking short term rentals comply

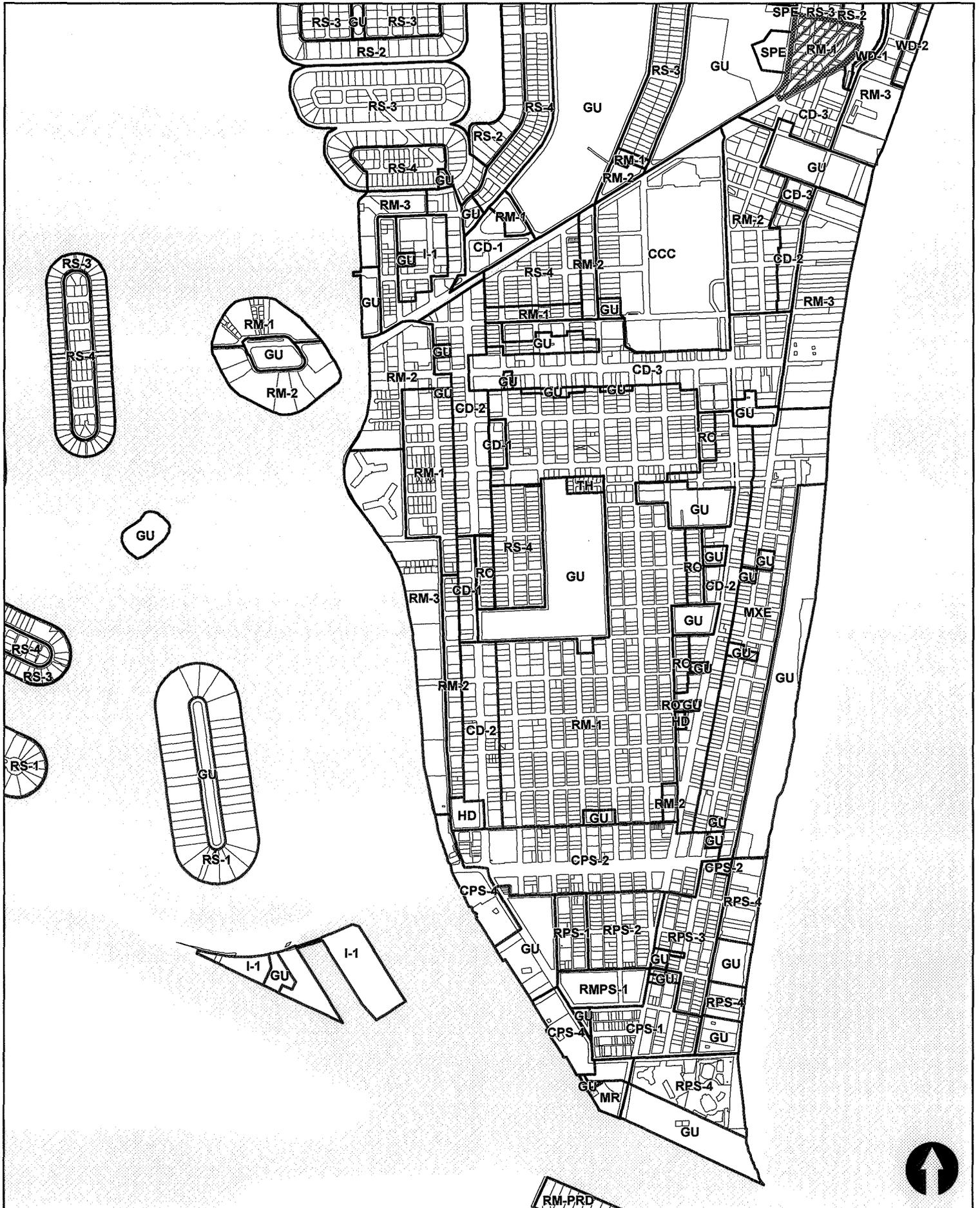
with the provisions of the ordinance. Long term fiscal effects are also difficult to estimate. While the effect of the short term rental program on property values of the subject short term rental apartments would most likely be positive, its effect on the properties surrounding such locations can be less predictable, if the potential for negative impacts upon surrounding properties is not properly controlled.

CONCLUSION

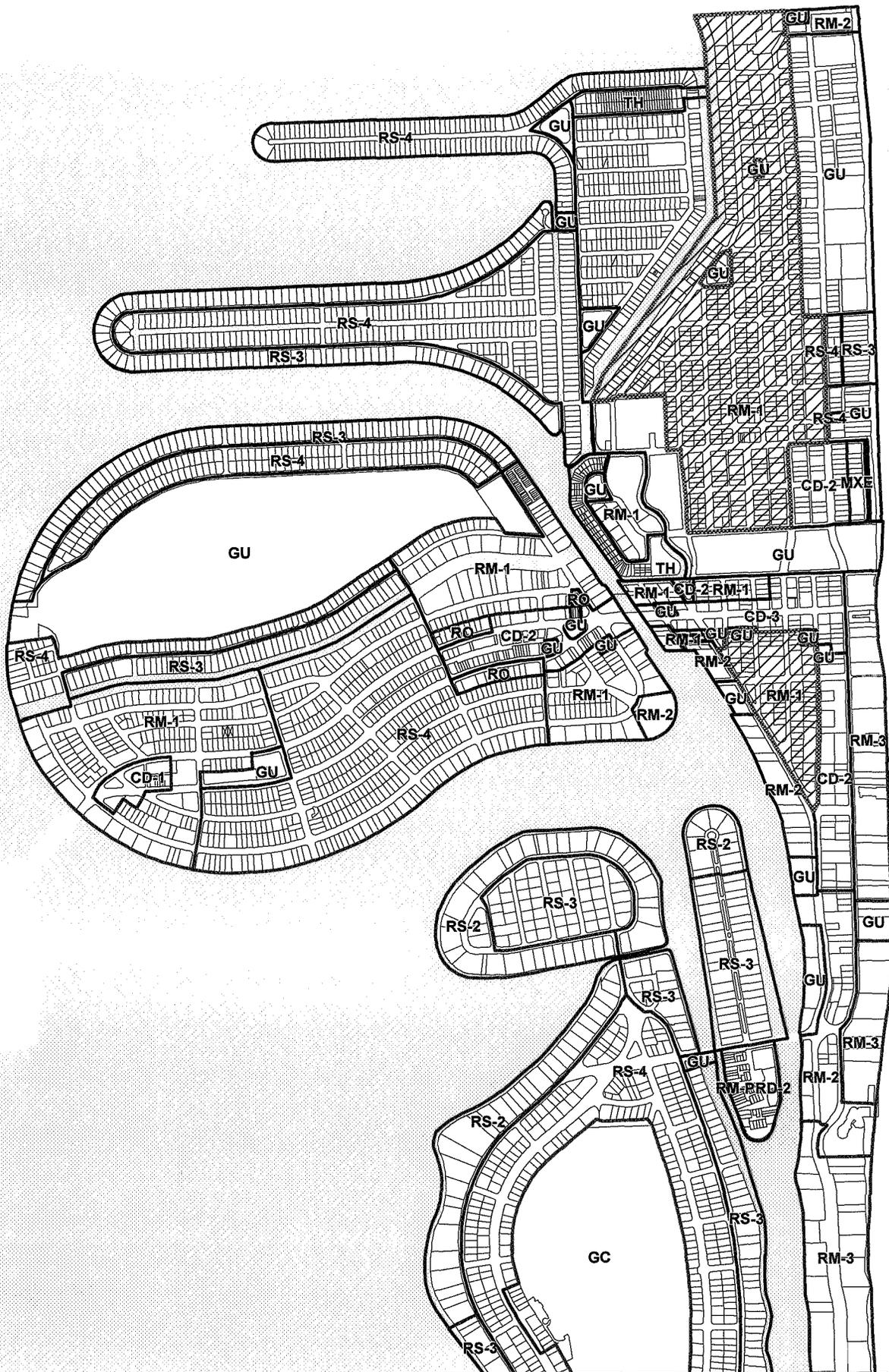
The Administration recommends that the City Commission approve the Planning Board recommended version of the ordinance upon first reading, and schedule a second reading and public hearing for October 14, 2009. The Administration also recommends that the subject be referred back to the Land Use and Development Committee for exploration of possible additional legislation creating individual areas such as Neighborhood Conservation Districts (NCD's) which could permit short term rentals if specific neighborhood areas reached consensus on the idea in future.

T:\AGENDA\2009\September 9\Regular\Short Term Rental memo.docx

PROPOSED SHORT TERM RENTALS



PROPOSED SHORT TERM RENTALS





MIAMI BEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager
 Jose Smith, City Attorney 

DATE: September 10, 2008

SUBJECT: **A REQUEST FOR REFERRAL TO THE LAND USE AND DEVELOPMENT COMMITTEE AND THE PLANNING BOARD FOR CONSIDERATION OF AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS BY AMENDING OR ADDING NEW REGULATIONS CONCERNING SHORT TERM RENTAL OF MULTIFAMILY UNITS IN ZONING DISTRICTS THAT DO NOT PERMIT HOTELS OR TRANSIENT OCCUPANCIES.**

ADMINISTRATION AND CITY ATTORNEY RECOMMENDATION

Approve the requested referral.

ANALYSIS

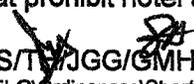
The Land Development Regulations restrict multi-family residential properties to residential and compatible uses. In the RM-1, RM-PRD, RM-PRD-2, RPS-1 and RPS-2 multifamily zoning districts, regulations do not allow hotel, apartment hotel, or suites hotel uses, which uses constitute transient occupancy. Further, hotel uses are not permitted in the CD-1, RO, RO-2, RO-3, and TH districts. Therefore, hotel and transient uses are prohibited in these zoning districts.

It has come to the City's attention that numerous multifamily building and apartment unit owners are engaged in short term rental of their units, including on a daily or weekly basis. Such use disrupts the residential character of these buildings. When discovered, the owners are cited for violation of the applicable City Code provisions that prohibit such hotel or transient use.

It has become apparent that it is appropriate for the City to codify a policy on short term rental of multifamily buildings and apartment units. This referral is intended to initiate the process by which such policy determination and codification may occur. Through this referral process, it can be determined which districts' regulations should be modified, and how.

CONCLUSION

The Administration and City Attorney recommend the referral to the Land Use and Development Committee and the Planning Board for consideration of an ordinance regulating short term or seasonal rentals in the multifamily and other zoning districts in the City that prohibit hotel and transient uses, as set forth above.

JMG/JS/TJ/JGG/GMH 

F:\atto\HELG\Ordinances\Short Term Rentals - Multifamily\Memorandum to Commission for Referral rev.doc

Agenda Item C4D
Date 9-10-08

Planning Board recommended ordinance

“SHORT TERM RENTAL OF APARTMENT UNITS OR TOWNHOMES”

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142 OF THE CITY CODE, “ZONING DISTRICTS AND REGULATIONS,” ARTICLE IV, “SUPPLEMENTARY DISTRICT REGULATIONS,” DIVISION 3, “SUPPLEMENTARY USE REGULATIONS,” BY CREATING NEW ORDINANCE SECTION 142-1111, “SHORT TERM RENTAL OF APARTMENT UNITS OR TOWNHOMES,” PROVIDING FOR REPEALER, NONSEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the Land Development Regulations (“LDRs”) restrict multifamily residential properties to residential and compatible uses; and

WHEREAS, the LDRs are designed to protect and preserve the identity, image, environmental quality, privacy, attractive pedestrian streetscapes, and human scale and character of the City’s residential neighborhoods and buildings and to encourage and promote construction that is compatible with the established neighborhood context; and

WHEREAS, the RM-1, RM-PRD, RM-PRD-2, RPS-1 and RPS-2, CD-1, RO, RO-3, and TH zoning districts do not permit hotel uses, except for a specified section of the RM-1 district in North Beach, and apartment hotels in the RPS-1 and RPS-2 districts; and

WHEREAS, the land development regulations define hotel uses as buildings occupied or intended to be occupied by transient residents; and

WHEREAS, the City Code treats residences leased in the City for less than six consecutive months and one day as transient occupancy; and

WHEREAS, the rental of multifamily residential or townhome properties in districts that do not permit hotel uses for periods of less than six months and one day is a transient use and therefore prohibited under existing regulations; and

WHEREAS, the City has determined that there is a potential for harm if transient rentals are permitted without regulations protecting against adverse external effects of such use or prohibited in certain instances; and

WHEREAS, multifamily or townhome unit owners' sense of community and privacy would be compromised by commercial and transient use of units in multifamily buildings and neighborhoods; and

WHEREAS, multifamily or townhome unit owners have reasonable expectations of a community of permanent neighbors and owners and the privacy such a community entails; and

WHEREAS, the privacy and ambience of such multifamily or townhome residential buildings and areas are materially undermined by transient rentals; and

WHEREAS, the values associated with multifamily or townhome residential areas can only be preserved by very limited and controlled commercial and transient use of residences, if at all; and

WHEREAS, the Planning Department Staff Report contains further history, research and concerns about this issue, which report is adopted as part of the legislative history of this ordinance; and

WHEREAS, while residents are entitled to enjoy the use of their multifamily units consistent with applicable regulations in apartment or townhome residential districts, it is deemed that such uses may exist in apartment or townhome districts if subject to regulation that would protect the enjoyment, character and value of apartment or townhome residential neighborhoods, buildings and units, and accordingly, the provisions herein regarding Short Term Rental of Apartment Units or Townhomes are hereby adopted.

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

Section 1. That City Code Chapter 142, "Zoning Districts And Regulations," Article IV, "Supplementary District Regulations," Division 3, "Supplementary Use Regulations," is hereby amended by creating new Section 142-1111, "Short Term Rental Of Multifamily Units," as follows:

Sec. 142-1111. Short Term Rental Of Apartment Units or Townhomes.

(a) Intent and Purpose:

The Land Development Regulations restrict apartment and townhome residential properties to residential and compatible uses. 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.

(b) Regulations:

For properties within the RM-1 district and located either:

- i. within the Collins Waterfront Historic District; or,
- ii. within the area north of 73rd Street and east of Tatum Waterway; or,
- iii. within the triangle bounded by Indian Creek Drive, Harding Avenue and 71st Street,

unless otherwise expressly provided for in these land development regulations, short term rental of apartment (including condominium) and townhome residential units shall be permitted, provided that the following mandatory requirements are followed:

- 1) **Time period.** All short term rentals under this section must be pursuant to a binding written agreement, license or lease for seven (7) or more consecutive days. Each such document shall contain, at a minimum: the beginning date and the ending date of the lease term; and each lessee's name, permanent address, land line telephone number, cell phone number, fax number, and e-mail address, as applicable. No unit may be rented more frequently than on a weekly basis.
- 2) **Family or housekeeping unit.** All rentals must be to one family or housekeeping unit (as defined under *family* in section 114-1). This section does not authorize the establishment of rooming houses as defined in section 114-1 in these districts.
- 3) **Contact person.** All rentals must be supervised by the owner, manager, or a local and licensed real estate broker or agent or an authorized agent licensed by the City, who must be available for contact on a twenty-four hour basis, seven days a week, and who must have a principal office or principal residence located within the City of Miami Beach, at which each agreement, license, or lease, or scanned copy thereof, must be kept available throughout its lease term and for a period of one year thereafter, so that each such document or, solely at the option of the authorized enforcement personnel specified in Section 142-1111(c)(3), 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 and townhome units, as defined in section 114-1, legally created pursuant to applicable law, may be rented to a family or housekeeping unit under this section, not individual rooms or separate portions of apartments or townhome units.

- 5) **Rules and Procedures.** The city manager or designee may adopt administrative rules and procedures to assist in the uniform enforcement of this ordinance.
- 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) **Approvals required.** Owners must obtain a business tax receipt, certificate of use, and certificate of occupancy (required to prove compliance with applicable codes), and provide contact information (name, permanent office or residential address, land line telephone number, cell phone number, fax number, and e-mail address as applicable) to the city manager or designee for the person identified in subsection 3 above on an application form provided for that purpose. The application shall be accompanied by the letter described in subsection 10 below if applicable and by copies of the business tax receipt, certificate of use, and certificate of occupancy. The application shall also include 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 filed with the Planning Director or his designee.
- 8) Approvals shall be issued for a one-year period, but shall not be issued or renewed if more than two violations at the unit, or at another unit in the building owned by the same owner or managed by the same person or entity, of the noise ordinance, commercial use ordinance, or this ordinance issued to the short term rental owner or operator were adjudicated either by failure to appeal from a Notice of Violation or a Special Master's determination of a violation, within the 18 months preceding the date of filing of the application. The City may for cause revoke an approval before its expiration date, in which event the owner may not reapply for a period of one year following the date of revocation; provided, however, that, before any such revocation, the City shall furnish to the owner of record both notice by certified mail and the opportunity to present information as to why the approval should not be revoked.
- 9) **Resort taxes.** Owners are subject to resort taxes for rentals under this section.
- 10) **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 sixty 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 7 above are not prohibited by the association's governing documents, shall be submitted to the City as part of the application.

- 11) Apartment buildings in single family districts. Apartment buildings in single family zoning districts shall follow the regulations in such single family zoning districts.
- 12) Single family structures in a zoning district listed in this section. Single family structures in a zoning district listed in this section may engage in rentals in accordance with this section, following receipt of proper approvals. Only entire single family structures may be rented under this ordinance, unless in conformity with the requirements of section 142-1401 as an historic bed and breakfast.
- 13) Variances. No variances may be granted from the requirements of this section.

(c) 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 ordinance.

- a. If the violation is the first violation: \$500.00;
- b. If the violation is the second violation within the preceding 18 months: \$1,500.00;
- c. If the violation is the third violation within the preceding 18 months: \$5,000.00;
- d. If the violation is the fourth or greater violation within the preceding 18 months: \$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 or impose a prohibition against, or revoke approvals issued for, rentals permitted under this section.

(3) Any city police officer or code compliance officer may issue notices for violations of this ordinance, with alternative enforcement as provided in section 1-14 and Chapter 30 of this Code. Violations shall be issued to the owner, owner's agent, renter, and/or to any realtor, real estate agent, real estate broker, 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, or on the owner's registered agent.

(d) Applicability.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that for a limited period of time of one (1) year after the date of this ordinance, the provisions of this ordinance shall also be applicable to apartment buildings or apartments, located within any zoning district, which:

(A) have been registered with the City for the payment of Resort Tax as of June 1, 2009; and,

(B) have either:

- a. had Resort Tax taxable room revenue equal to least 50% of total room revenue over the past two years, or,
- b. paid a total of over \$3,000 in cumulative Resort Tax room tax over the past eight (8) years.

During the one year period of time after the effective date of this ordinance, applicants demonstrating compliance with A and B above may apply for short term rental approval as detailed in Section 142-1111(b).

Section 3. Repealer.

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

Section 4. Codification.

It is the intention of the City Commission, and it is hereby ordained, that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, as amended; that the sections of this Ordinance may be re-numbered or re-lettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

Section 5. Nonseverability.

This ordinance is not severable, and if any provision hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the ordinance shall be returned to the City Commission for reconsideration or clarification.

Section 6. Effective Date.

This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this _____ day of _____ 2009.

ATTEST:

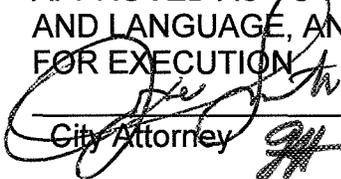
MAYOR

CITY CLERK

First Reading:
Second Reading:
Verified By:

Jorge G. Gomez, AICP
Planning Director

APPROVED AS TO FORM
AND LANGUAGE, AND
FOR EXECUTION



City Attorney  9/3/09 _____
Date

F:\PLAN\SPLB\draft ordinances\1925 - short term rental multifamily\Short Term FINAL PLANNING BOARD VERSION 0901.doc

Original ordinance - Citywide

“SHORT TERM RENTAL OF APARTMENT UNITS OR TOWNHOMES”

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142 OF THE CITY CODE, “ZONING DISTRICTS AND REGULATIONS,” ARTICLE IV, “SUPPLEMENTARY DISTRICT REGULATIONS,” DIVISION 3, “SUPPLEMENTARY USE REGULATIONS,” BY CREATING NEW ORDINANCE SECTION 142-1111, “SHORT TERM RENTAL OF APARTMENT UNITS OR TOWNHOMES,” PROVIDING FOR REPEALER, NONSEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the Land Development Regulations (“LDRs”) restrict multifamily residential properties to residential and compatible uses; and

WHEREAS, the LDRs are designed to protect and preserve the identity, image, environmental quality, privacy, attractive pedestrian streetscapes, and human scale and character of the City’s residential neighborhoods and buildings and to encourage and promote construction that is compatible with the established neighborhood context; and

WHEREAS, the RM-1, RM-PRD, RM-PRD-2, RPS-1 and RPS-2, CD-1, RO, RO-3, and TH zoning districts do not permit hotel uses, except for a specified section of the RM-1 district in North Beach, and apartment hotels in the RPS-1 and RPS-2 districts; and

WHEREAS, the land development regulations define hotel uses as buildings occupied or intended to be occupied by transient residents; and

WHEREAS, the City Code treats residences leased in the City for less than six consecutive months and one day as transient occupancy; and

WHEREAS, the rental of multifamily residential or townhome properties in districts that do not permit hotel uses for periods of less than six months and one day is a transient use and therefore prohibited under existing regulations; and

WHEREAS, the City has determined that there is a potential for harm if transient rentals are permitted without regulations protecting against adverse external effects of such use or prohibited in certain instances; and

WHEREAS, multifamily or townhome unit owners' sense of community and privacy would be compromised by commercial and transient use of units in multifamily buildings and neighborhoods; and

WHEREAS, multifamily or townhome unit owners have reasonable expectations of a community of permanent neighbors and owners and the privacy such a community entails; and

WHEREAS, the privacy and ambience of such multifamily or townhome residential buildings and areas are materially undermined by transient rentals; and

WHEREAS, the values associated with multifamily or townhome residential areas can only be preserved by very limited and controlled commercial and transient use of residences, if at all; and

WHEREAS, the Planning Department Staff Report contains further history, research and concerns about this issue, which report is adopted as part of the legislative history of this ordinance; and

WHEREAS, while residents are entitled to enjoy the use of their multifamily units consistent with applicable regulations in apartment or townhome residential districts, it is deemed that such uses may exist in apartment or townhome districts if subject to regulation that would protect the enjoyment, character and value of apartment or townhome residential neighborhoods, buildings and units, and accordingly, the provisions herein regarding Short Term Rental of Apartment Units or Townhomes are hereby adopted.

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

Section 1. That City Code Chapter 142, "Zoning Districts And Regulations," Article IV, "Supplementary District Regulations," Division 3, "Supplementary Use Regulations," is hereby amended by creating new Section 142-1111, "Short Term Rental Of Multifamily Units," as follows:

Sec. 142-1111. Short Term Rental Of Apartment Units or Townhomes.

(a) Intent and Purpose:

The Land Development Regulations restrict apartment and townhome residential properties to residential and compatible uses. 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.

(b) Regulations:

For properties within the RM-1, RM-PRD, RM-PRD-2, RPS-1 and RPS-2, CD-1, RO, RO-3 and TH districts, unless otherwise expressly provided for in these land development regulations, short term rental of apartment (including condominium) and townhome residential units shall be permitted, provided that the following mandatory requirements are followed:

- 1) **Time period.** All short term rentals under this section must be pursuant to a binding written agreement, license or lease for seven (7) or more consecutive days. Each such document shall contain, at a minimum: the beginning date and the ending date of the lease term; and each lessee's name, permanent address, land line telephone number, cell phone number, fax number, and e-mail address, as applicable. No unit may be rented more frequently than on a weekly basis.
- 2) **Family or housekeeping unit.** All rentals must be to one family or housekeeping unit (as defined under *family* in section 114-1). This section does not authorize the establishment of rooming houses as defined in section 114-1 in these districts.
- 3) **Contact person.** All rentals must be supervised by the owner, manager, or a local and licensed real estate broker or agent or an authorized agent licensed by the City, who must be available for contact on a twenty-four hour basis, seven days a week, and who must have a principal office or principal residence located within the City of Miami Beach, at which each agreement, license, or lease, or scanned copy thereof, must be kept available throughout its lease term and for a period of one year thereafter, so that each such document or, solely at the option of the authorized enforcement personnel specified in Section 142-1111(c)(3), 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 and townhome units, as defined in section 114-1, legally created pursuant to applicable law, may be rented to a family or housekeeping unit under this section, not individual rooms or separate portions of apartments or townhome units.

- 5) **Rules and Procedures.** The city manager or designee may adopt administrative rules and procedures to assist in the uniform enforcement of this ordinance.
- 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) **Approvals required.** Owners must obtain a business tax receipt, certificate of use, and certificate of occupancy (required to prove compliance with applicable codes), and provide contact information (name, permanent office or residential address, land line telephone number, cell phone number, fax number, and e-mail address as applicable) to the city manager or designee for the person identified in subsection 3 above on an application form provided for that purpose. The application shall be accompanied by the letter described in subsection 10 below if applicable and by copies of the business tax receipt, certificate of use, and certificate of occupancy. The application shall also include 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 filed with the Planning Director or his designee.
- 8) **Approvals shall be issued for a one-year period, but shall not be issued or renewed if more than two violations at the unit, or at another unit in the building owned by the same owner or managed by the same person or entity, of the noise ordinance, commercial use ordinance, or this ordinance issued to the short term rental owner or operator were adjudicated either by failure to appeal from a Notice of Violation or a Special Master's determination of a violation, within the 18 months preceding the date of filing of the application. The City may for cause revoke an approval before its expiration date, in which event the owner may not reapply for a period of one year following the date of revocation; provided, however, that, before any such revocation, the City shall furnish to the owner of record both notice by certified mail and the opportunity to present information as to why the approval should not be revoked.**
- 9) **Resort taxes.** Owners are subject to resort taxes for rentals under this section.
- 10) **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 sixty 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 7 above are not prohibited by the association's governing documents, shall be submitted to the City as part of the application.

- 11) Apartment buildings in single family districts. Apartment buildings in single family zoning districts shall follow the regulations in such single family zoning districts.
- 12) Single family structures in a zoning district listed in this section. Single family structures in a zoning district listed in this section may engage in rentals in accordance with this section, following receipt of proper approvals. Only entire single family structures may be rented under this ordinance, unless in conformity with the requirements of section 142-1401 as an historic bed and breakfast.
- 13) Variiances. No variances may be granted from the requirements of this section.

(c) 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 ordinance.

- a. If the violation is the first violation: \$500.00;
- b. If the violation is the second violation within the preceding 18 months: \$1,500.00;
- c. If the violation is the third violation within the preceding 18 months: \$5,000.00;
- d. If the violation is the fourth or greater violation within the preceding 18 months: \$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 or impose a prohibition against, or revoke approvals issued for, rentals permitted under this section.

(3) Any city police officer or code compliance officer may issue notices for violations of this ordinance, with alternative enforcement as provided in section 1-14 and Chapter 30 of this Code. Violations shall be issued to the owner, owner's agent, renter, and/or to any realtor, real estate agent, real estate broker, 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, or on the owner's registered agent.

Section 2. Repealer.

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

Section 3. Codification.

It is the intention of the City Commission, and it is hereby ordained, that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, as amended; that the sections of this Ordinance may be re-numbered or re-lettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

Section 4. Nonseverability.

This ordinance is not severable, and if any provision hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the ordinance shall be returned to the City Commission for reconsideration or clarification.

Section 5. Effective Date.

This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this _____ day of _____ 2009.

ATTEST:

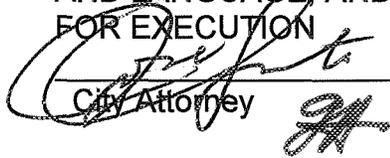
MAYOR

CITY CLERK

First Reading:
Second Reading:
Verified By:

Jorge G. Gomez, AICP
Planning Director

APPROVED AS TO FORM
AND LANGUAGE AND
FOR EXECUTION



City Attorney

9/3/09

Date

Flamingo Park Neighborhood Association (FPNA)

c/o Miami Beach Community Development Corporation / 945 Pennsylvania Avenue
Miami Beach, FL 33139

At its meeting on June 8, 2009, the Flamingo Park Neighborhood Association approved the following resolution in concept, subject to further discussion and modification.

Resolution RE: Proposed Changes to City Code Allowing Short Term Rentals in Flamingo Park / Art Deco Historic District Submitted: FPNA Meeting / June 8, 2009

WHEREAS, the City of Miami Beach Planning Department Staff Report recommends a revision to the current code* which would allow short-term rentals ('short-term' defined as a period of no less than one week) in RM-1 zoned neighborhoods, to include Flamingo Park / Art Deco Historic District. *Staff Report defines the current code in this way: "... the City treats the rental of multi-family residential or town-home properties in districts that do not permit hotel uses (RM-1) for periods of less than 6 months and one day as transient use, and is therefore prohibited under existing regulations":

WHEREAS, the City of Miami Beach Planning Board at its May 27, 2009 meeting generally endorsed said revision to the Code, with a continuance of discussions identifying those RM-1 districts, either in part or in their entirety, which should fall under the governance of such revision:

WHEREAS, the current six month plus one day policy for the Flamingo Park / Art Deco Historic District follows the guidelines of the Anderson Notter Finegold Preservation and Development Plan of 1981 (commissioned by the Miami Design Preservation League after the recognition of the Miami Beach Architectural District in 1979), which recognizes the unique character of the Flamingo Park neighborhood and labels it "residential" for "permanent and seasonal residents" (seasonal residents defined as those who make their homes in Miami Beach from November to April):

WHEREAS, permanent residents of the Flamingo Park / Art Deco Historic District have settled here precisely because of their long-fought and hard-earned sense of community and permanence, a social amenity which has greatly enhanced the destination appeal of South Beach and lies at the core of its long-term economic health. Statistics included in the Staff Report do not give equal weight to the large population of permanent, long-term renters, for whom living full-time in Miami Beach constitutes an equivalent form of "homestead", and whose lifestyle expectations should be factored into any thorough analysis:

WHEREAS, regulating a greater transient population in the Flamingo Park / Art Deco Historic District would significantly increase the burden on City services and their allocation, at a time when revenue streams from property taxes are decreasing:

WHEREAS, the City's regulatory requirements for transient residences in its commercial districts (ie hotels) all require full-time, on-site management, while the proposed short-term rental allowance in an RM-1 residential district calls only for the posting of a business contact (owner/manager's office phone number) at the apartment location, putting unfair burden on adjacent property occupants in the event of after-hours disturbances. The proposed change fails to provide sufficient safeguards for residents both adjacent to and within the multi-family building in which there could be new legalized transiency. The Staff Report fails to acknowledge and give weight to Flamingo Park / Art Deco Historic District's composition of single-family homes, next to duplex homes, next to 6-unit condominiums, next to 24-unit rental buildings, next to single-family homes, any/all separated by as little as 10 feet of easement, or one thin wall. With such a dense and diverse housing profile, the City's first responsibility is to its permanent residents and the peaceful enjoyment of their homes. "Every inn needs an innkeeper":

WHEREAS, the City of Miami Beach has been outspoken in its advocacy of affordable housing, both for work force and low-income families, and inventory for such diverse housing would be threatened by the potentially more lucrative short-term rental market:

THEREFORE, the Flamingo Park Neighborhood Association encourages the City of Miami Beach Commission to take the following measure:

- Retain the current policy limiting rental periods to a six month and one day minimum in the RM-1 zone of the Flamingo Historic District including the exception allowing bed and breakfast facilities, with the following **additional exceptions**:
 - * Grant those property owners already offering short term rentals, who have demonstrated compliance with the City's licensing and resort tax requirements, "grandfather" status.
 - * Introduce an apartment/hotel designation in RM-1 districts, similar to that found in the interior portion (RPs 1/2) of the South of Fifth neighborhood.
 - * In the case of any/all approved short-term rental buildings according to the exceptions outlined herein, require a 24-hour on-site or "within 1 block" owner/manager, to whom all complaints from disturbed neighbors could be taken.

FPNA urges the CMB Commission to review the above with considerable thought, and to examine the Planning Department Staff Report, and the Planning Board's recommendation to adopt these changes, closely. Considering a change of use of this magnitude within a compact, small-scale neighborhood such as Flamingo Park must be done with great sensitivity in the short term, and a thorough scrutiny of the long-term consequences.

Approved in Concept

**SHORT TERM RENTALS ORDINANCE
FIRE CODE ANALYSIS
MULTI FAMILY BUILDINGS**

Source Document: Florida Statute 633 Fire Prevention and Control
Rules of the Division of State Fire Marshal – Chapter 69A-60
Florida Fire Prevention Code (FFPC) – 2007 Edition
Rules of the Division of State Fire Marshal – Chapter 69A-43
*Uniform Fire Safety Standards for Transient Public
Lodging Establishments*

Definitions:

- Short Term Rental is not defined in the Fire Code. The Fire Code uses the terminology of transient or permanent residential stay. This analysis will use the term transient as defined in the FFPC.
- Apartment Building – A building or portion thereof containing 3 or more dwelling units with independent cooking and bathroom facilities.
- Hotel – A building or groups of buildings under the same management in which there are sleeping accommodations for more than 16 persons (*17 persons or more*) and primarily used for transients for lodging.
- Lodging or Rooming House – A building or portion thereof that provides sleeping accommodations for 16 people or less, but more than 3 people (*between 4 and 16 people*) on a transient or permanent basis, with or without meals, but without separate cooking facilities for individual occupants.
- Transients – accommodations for less than 30 days.
- Non-transient or permanent residence – residence for 30 days or more.

Florida Statute 509.242 contains the list of license classification as issued by the Department of Business and Professional Regulations-Division of Hotels. Two important classifications applicable to this report.

- Nontransient apartment or roominghouse- A nontransient apartment or rooming house is a building or complex of buildings in which 75 percent or more of the units are available for rent to nontransient tenants.
- Transient apartment or roominghouse – A transient apartment or roominghouse is a building or complex of buildings in which more than 25 percent of the units are advertised or held out to the public as available for transient occupancy.

Conversion: General

Each building is designed to comply with the Building Code and Fire Code in effect at the time of construction. The architect of record selects the appropriate occupancy classification and the design must comply with the specific requirements for that occupancy.

The Life Safety Code component of the FFPC is written in sections (chapters) that apply to new construction and sections that apply to existing buildings. The Fire Code does not normally impose new requirements to existing buildings in order to avoid hardship to retrofit existing buildings. (*FFPC, NFPA 101, Section 1.3.1*) The new construction requirements are based on actual fire experience, research, technology improvements, etc. in order to prevent fire deaths and injuries, and reduce property losses. However, in some cases, the fire experience and research in the USA has resulted in some changes mandated for existing buildings. For example, the current code was changed to add a requirement to install an automatic sprinkler system in existing high rise buildings.

If the building owner wants to change the occupancy of the building to another occupancy classification, then the owner must apply for a change of occupancy permit. This permit is the mechanism for the Fire Department and Building Department to review for the code requirements of the new occupancy. In a building, whether or not a physical alteration is needed, a change from one use or occupancy classification to another shall comply with Section 4.6.7 (*FFPC, NFPA 101, Section 4.6.12*)

The State Fire Marshal's Office has indicated that the license classifications under the Division of Hotels will determine which occupancy classification in the Fire Code (FFPC) will apply. If number of units to be rented on transient basis does not change the Division of Hotel license to transient apartments, then there is no change of occupancy in the Fire Code.

Conversion: Apartment Occupancy to Lodging Occupancy (FFPC)

If the owner of an apartment building wants to convert to transient residential establishment for 16 or less people, then the owner must apply for a change of occupancy permit. In this case, the apartment units already have independent cooking facilities, which is not part of the definition for lodging or rooming house. Therefore, the building must comply with both existing apartment occupancy and new lodging occupancies.

Requirements: (*FFPC, NFPA 101, Chapter 26*)

(General description below-Architect must review FFPC for complete requirements)

New lodging occupancy

- Multiple occupancies must comply with specific egress requirements.
- Means of Escape (primary and secondary) must be provided

- Stairways must have proper enclosures
- Doors must have proper width and proper hardware
- Locks on doors must comply with code
- Vertical openings must be protected
- Interior Finish must comply with code
- Fire Alarm system must be provided.
- Smoke alarms in every sleeping room must be provided
- Sleeping rooms must be separated by smoke partitions
- Fire sprinkler system must be provided unless the building meets exception (every sleeping room has door opening directly to the outside)
- Building services (utilities, hvac, elevators) must comply with code

Conversion: Apartment Occupancy to Hotel Occupancy (FFPC)

If the owner of an apartment building wants to convert to transient residential establishment for 17 or more people, then the owner must apply for a change of occupancy permit.

Requirements: (*FFPC, NFPA 101, Chapter 28*)

(General description below-Architect must review FFPC for complete requirements)

New Hotel Occupancy

- Multiple occupancies must comply with specific egress requirements.
- Occupant load must be calculated and egress capacity provided for same
- Means of Egress requirement must comply with code
- Exits must comply with Chapter 7 and means of escape must comply with Chapter 24.
- Doors must have proper width and proper hardware
- Locks on doors must comply with code
- Arrangement of means of egress must comply with code
- Number of exits must be adequate and comply with code
- Stairs must have proper rated enclosure
- Arrangement of the means of egress must comply with code (dead ends, common path of travel, etc.)
- Travel distance to exits must comply with code
- Discharge of exits must be adequate and comply with code
- Illumination of means of egress must be provided
- Emergency lighting must be provided
- Exits signage must be provided
- Vertical openings must be protected
- Protection from hazards must be provided
- Interior Finish must comply with code
- Furnishings and decorations must comply with code
- Fire Alarm system must be provided.

- Smoke alarms in every sleeping room, living area, and guest rooms must be provided
- Sleeping rooms must be separated by smoke partitions
- Fire sprinkler system must be provided no exceptions in Florida
- Exit access corridors must have fire resistance rating required in the code
- Fire rated separation between rooms as required by code
- High rise building must comply with specific requirements
- Building services (utilities, hvac, elevators, trash chute, etc.) must comply with code

Note: The public lodging establishments are licensed by Department of Business and Professional Regulations-Division of Hotels. The State Fire Marshal's Office has fire code enforcement authority over the same establishments. The local Fire Marshals must enforce Rule 69A-43 and 69A-60 which both reference Florida Statutes. The Florida Statute and Rules have some conflicting requirements that can only be addressed through a Declaratory Statement or Rule Making Changes.

Hazard Analysis and Statistics:

The hazards associated with apartment occupancy are higher fuel load, greater number of ignition sources, and travel through multiple rooms.

The hazard associated with a hotel is that occupants have little of or no familiarity as opposed to occupants in an apartment building, who are very familiar with the building. Unfamiliar surroundings and the possibility of being asleep when a fire occurs are factors that jeopardize the safety of hotel guests.

Statistics – US Fire Administration

Residential Fires in USA

The residential structure fire problem represented approximately 81% of all fire deaths and 79% of the injuries to civilians in 2006.

2006 412,500 Fires 2,620 Deaths 12,925 Injuries \$6.990 Billion

The number one cause of residential fires was due to cooking.
The number one cause of fire deaths was due to smoking.

City of Miami Beach

2007: Responded to 277 Total Fires -- 126 occurred in residential buildings.
0 fire deaths, 2 civilian injuries.

Note: The requirements of the Florida Building Code would also apply to a change of occupancy. The CMB Building Official would provide that analysis.

Prepared by: Sonia Machen, Fire Marshal 3/4/2009

THIS PAGE INTENTIONALLY LEFT BLANK