



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

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber
Members of the City Commission

CC: Jimmy L. Morales, City Manager
Rafael E. Granado, City Clerk

FROM: Raul J. Aguila, City Attorney

A handwritten signature in blue ink, appearing to read "Raul J. Aguila", is written over the printed name of the City Attorney.

DATE: October 14, 2020

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING MIAMI BEACH CITY CODE CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE IV, "SUPPLEMENTARY DISTRICT REGULATIONS," SECTION 142-905, "PERMITTED ACCESSORY USES IN SINGLE-FAMILY DISTRICTS," AT SUBSECTION (b)(5) THEREOF, AND AMENDING SECTION 142-1111, "SHORT-TERM RENTAL OF APARTMENT UNITS OR TOWNHOMES," FOR THE LIMITED PURPOSE OF DELETING THE FINE AMOUNTS SPECIFIED THEREIN FOR VIOLATIONS OF THE CITY'S SHORT-TERM RENTAL RESTRICTIONS (INCLUDING CORRESPONDING RESTRICTION ON SPECIAL MASTER'S INABILITY TO WAIVE OR REDUCE SAID FINES), AND SUBSTITUTING THEREFOR THOSE FINE AMOUNTS WITHIN THE STATUTORILY-PRESCRIBED LIMITS SET FORTH IN CHAPTER 162, FLORIDA STATUTES; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

RECOMMENDATION

The City Attorney and City Manager recommend that the City Commission adopt the Ordinance at Second Reading/Public Hearing on October 14, 2020.

BACKGROUND

On September 16, 2020, pursuant to City Code Section 118-163, the City Commission referred this Ordinance to the Planning Board for its review and recommendation. On September 22, 2020, the Planning Board reviewed this matter and, by a vote of 7-0, transmitted the Ordinance to the City Commission with a favorable recommendation (Planning Board File No. PB 20-0397). On September 29, 2020, the City Commission approved the Ordinance on First Reading.

ANALYSIS

The attached Ordinance amends Miami Beach City Code Sections 142-905 and 142-1111 for the limited purpose of repealing the City's fines for violations of the Code's short-term rental regulations (including the corresponding restriction on the Special Master's inability to waive or reduce said

finer), and substituting in their place those fine amounts set forth in Chapter 162, Florida Statutes.¹ These amendments have been drafted so that the City's fine structure complies with the Third District Court of Appeal's September 23, 2020 decision in *City of Miami Beach vs. Nichols*, which held the City was preempted by Florida law from imposing its own fines for violations of short-term rental restrictions, and since the City's fine structure exceeded those established by Chapter 162, Florida Statutes, the City's fines were unlawful.² The Third District's ruling of preemption was limited to the City's fines and did not find that the City's short-term rental restrictions themselves were unlawful; the Court further expressly upheld the severability of the fines from the remainder of the City's short-term rental regulations, thus confirming the validity of all remaining provisions in the City's short-term rental laws.

Notwithstanding the *Nichols* decision, the City continues to have a substantial interest in maintaining the aesthetics, character and tranquility of its residential neighborhoods, which important governmental interests continue to be directly advanced by the City's short-term rental regulations. As such, the City's short-term rental laws remain necessary and in the public interest, and it is thus our recommendation that the City Commission proceed forthwith to amend the subject Code sections for the limited purpose of conforming the fines to those mandated by the Court's order, as set forth above. In this regard, it is important to note that the amendments will merely substitute the City's existing fines for those set forth in Chapter 162, Florida Statutes (and delete the corresponding restriction on the Special Master's inability to waive or reduce said fines). The amendments do not regulate the duration or frequency of rental of vacation rentals, nor do they repeal or otherwise amend remaining unchanged provisions of the City's short-term rental ordinances.³

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. The proposed Ordinance will presumably have a negative fiscal impact upon the City due to the reduced fine amounts for violations of short term rental restrictions. However, existing City resources will be utilized to enforce the provisions of the Ordinance.

CONCLUSION

The City Attorney and City Manager recommend that the City Commission adopt the Ordinance.

¹ "... Such fines shall not exceed \$1,000 per day per violation for a first violation, \$5,000 per day per violation for a repeat violation, and up to \$15,000 per violation if the ... special magistrate finds the violation to be irreparable or irreversible in nature. In addition to such fines, a ... special magistrate may impose additional fines to cover all costs incurred by the local government in enforcing its codes and all costs of repairs ..." Fla. Stat. Sec. 162.09(2)(d); see also City of Miami Beach Code sections 30-74 (d) and 114-8.

² The Court's September 23, 2020 Order was issued pursuant to its grant of the City's Motion for Rehearing, whereupon the Court withdrew its previously-issued opinion of July 22, 2020 and substituted in its stead the subject September 23rd Order.

³ Remaining unchanged provisions of the short-term rental ordinances remain the law as of their original adoption date, reflecting the Court's September 23, 2020 Order finding the fines severable from remaining provisions of the City's short term rental laws.