

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

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.

**WHEREAS**, on September 23, 2020, the Third District Court of Appeal in *City of Miami Beach vs. Nichols*, held the City was preempted by Florida law from imposing its own fines for violations of short-term rental restrictions in City Code Sections 142-905(b)(5) and 142-1111, and since the City's fine structure exceeded those established by Chapter 162, Florida Statutes, the City's fines were unlawful<sup>1</sup>; and

**WHEREAS**, significantly, the Third District's ruling 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; and

**WHEREAS**, the City continues to have a substantial interest in maintaining the aesthetics, character and tranquility of its residential neighborhoods, in conjunction with regulating the flow of traffic and impacts of transient rentals and occupancy, which important governmental interests remain directly advanced by the City's short-term rental regulations; and

**WHEREAS**, the City Commission thus deems it necessary and in the public interest, to proceed forthwith to amend the subject Code sections for the limited purpose

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<sup>1</sup> 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 23<sup>rd</sup> Order.

of conforming the fines set forth therein to those dictated 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 provided in Chapter 162, Florida Statutes<sup>2</sup> (and delete the corresponding restriction on the Special Master's inability to waive or reduce said fines); and

**WHEREAS**, the subject 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<sup>3</sup>; and

**WHEREAS**, as required by the City Code, the City Commission referred consideration of the proposed amendments to the Planning Board which, on September 22, 2020, reviewed this matter for recommendation; and

**WHEREAS**, presentation of this matter to the City Commission is thus compliant with dictates of the City Code, and as such this Ordinance is ready for City Commission deliberation and action.

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

**SECTION 1.** That 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 Section 142-1111, "Short-Term Rental of Apartment Units or Townhomes," are hereby amended to read as follows:

## **CHAPTER 142 ZONING DISTRICTS AND REGULATIONS**

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<sup>2</sup> "...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.

<sup>3</sup> 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.

## ARTICLE IV. – SUPPLEMENTARY DISTRICT REGULATIONS

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### 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 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. Any appeal of the director's decision shall be to the board of adjustment. The restrictions set forth in this subsection (b)(2) shall not apply to an accessory dwelling unit (ADU).
- (3) An accessory dwelling unit (ADU) is permitted pursuant to the following requirements:
- a. *Maximum number.* No more than one ADU shall be permitted per single-family lot.
  - b. *Maximum area.* The area of an ADU shall be included in the overall unit size calculation for the site. In no instance shall the total size of the ADU exceed ten percent of the size of the main home on the subject site, or 1,500 square feet, whichever is less.
  - c. *Minimum area.* An ADU shall be a minimum of 200 square feet. However, this minimum standard shall not authorize an ADU to exceed the maximum area identified in subsection (b)(3)b., above. If the minimum area requirement

of 200 feet exceeds the maximum area requirement pursuant to subsection (b)(3)b., an ADU shall be prohibited on the site.

- d. *Existing accessory structures.* For existing accessory structures, built prior to January 1, 2019, the aforementioned maximum and minimum areas shall not be applicable to an ADU, unless the unit is expanded in size.
- e. *Location.* An ADU may be attached to the primary residence with a separate entrance that is not visible from public rights-of-way, subject to the any limitations on the primary structure as set forth in the land development regulations. Additionally, the entire site shall maintain the external appearance of a single-family home. Alternatively, an ADU may be located in an accessory building, subject to the requirements and limitations for accessory buildings in single-family districts identified in subsection 142-1132(a)(2).
- f. *Kitchens.* An ADU may contain a full kitchen facility.
- g. *Utilities.* A separate electric meter may be provided for an ADU.
- h. *Lease.* Any lease of an ADU shall be subject to the following requirements:
  - 1. Unless otherwise provided herein, the use of an ADU shall be limited to the use of the family occupying the primary dwelling, temporary guests, or servants of the occupants of the primary dwelling, and shall not be rented or leased.
  - 2. The lease of an ADU to a family unrelated to the family occupying the primary dwelling unit shall only be permitted within an ADU that was issued a certificate of occupancy on or before October 26, 2019, and shall only be permitted on properties that are owner-occupied and located between Dade Boulevard on the south and Pine Tree Drive Circle on the north. Each year, evidence of a property's homestead exemption shall be provided to the planning director, subject to the director's approval, in order to confirm the property's eligibility for the rental of an ADU. If a property ceases to be owner-occupied, the renewal of a lease for an ADU shall be prohibited, and residents of the ADU shall vacate the premises upon termination of the lease. It shall be the responsibility of the applicant to notify the city of any change to the status of the property's homestead exemption.
  - 3. The lease of an ADU to a family (as defined in section 114-1) unrelated to the family occupying the primary dwelling unit for a period less than six months and one day, including extensions for lesser periods of leases permitted under this subsection (b)(3)b. to original leaseholders, shall be prohibited.
  - 4. Property owners seeking to allow for the lease of an ADU unit to a family unrelated to the family occupying the primary dwelling unit must obtain all applicable fire and building permits, and a certificate of use, as applicable, permitting the lease of the ADU, subject to the requirements listed above. The application shall provide proof of compliance with the

requirements of this subsection (b)(3). Additionally, the applicant shall provide an affidavit agreeing to and affirming the applicant's understanding of the requirements in this subsection (b)(3).

5. A violation of these requirements shall be subject to the enforcement and enhanced penalty provisions for leases of single-family homes set forth in subsection 142-905(b)(5).
6. Tracking. The planning director shall maintain a database of all approved ADUs in the city, including statistics relating to the number of certificates of use issued, and any violations issued pursuant to this subsection (b)(3).

(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.

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 shall be a violation of this subsection 142-905(b)(5).

a. Enforcement.

1. Violations of subsection 142-905(b)(5) shall be subject to the following fines as provided in Chapter 162, Florida Statutes.<sup>4</sup> ~~The special master shall not waive or reduce fines set by this subsection.~~
  - ~~A. If the violation is the first violation: \$20,000.00.~~
  - ~~B. If the violation is the second violation within the preceding 18 months: \$40,000.00.~~
  - ~~C. If the violation is the third violation within the preceding 18 months: \$60,000.00.~~
  - ~~D. If the violation is the fourth violation within the preceding 18 months: \$80,000.00.~~
  - ~~E. If the violation is the fifth or greater violation within the preceding 18 months: \$100,000.00.~~

Fines for repeat violations by the same offender shall increase regardless of locations. The director of the code compliance department must remit a letter to the Miami-Dade Property Appraiser and the Miami-Dade Tax

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<sup>4</sup> "...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.

Collector, with a copy of the special master order adjudicating the violation, that notifies these governmental agencies that the single-family residential property was used for transient rental or occupancy at the single-family residential premises.

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 subsubsection 142-905(b)(5). 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 subsubsection 142-905(b)(5). 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.
  4. The advertising or advertisement for the transient rental or occupancy, short-term rental for period(s) of less than six months and one day of the residential property for the purpose of allowing such transient rental or occupancy, short-term rental or rental for period(s) of less than six months and one day at the residential premises is direct evidence that there is a violation of subsection 142-905(b)(5), which is admissible in any proceeding to enforce subsection 142-905(b)(5). The advertising or advertising evidence raises a rebuttable presumption that the residential property named in the notice of violation or any other report or as identified in the advertising or advertisement is direct evidence that the residential property was used in violation of subsection 142-905(b)(5).
- b. Enhanced penalties. The following enhanced penalties must be imposed, in addition to any mandatory fines set forth in subsection 142-905(b)(5)a, above, for violations of subsection 142-905(b)(5):
1. Enhanced penalties for violation of subsection 142-905(b)(5):
    - A. The transient rental or occupancy must be immediately terminated, upon confirmation that a violation has occurred, by the Miami Beach Police Department and the Code Compliance Department.
    - ~~B. If the offense is a second offense within the preceding 18-month period of time, and the total square footage of all building(s), accessory building(s), dwelling(s), or structure(s) exceed 5,000 square feet, then the special master must impose an additional fine of \$25,000.00.~~
    - B. A certified copy of an order imposing the civil fines and penalties must be recorded in the public records, and thereafter shall constitute a lien upon any other real or personal property owned by the violator and it may be enforced in the same manner as a court judgment by

the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. The certified copy of an order must be immediately recorded in the public records, and the city may foreclose or otherwise execute upon the lien.

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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) Unless a specific exemption applies below, 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, R0-3 or TH for periods of less than six months and one day.
- (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 occupancy of a residence for less than six months and one day, as provided herein, or use of the residential premises in violation of this section.

"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 occupancy of a residence for less than six months and one day, as provided herein, upon the premises, as may be viewed through various media, including, but not limited to, newspaper, magazines, flyers, handbills television commercial, radio advertisement, outdoor advertising, direct mail, blogs, websites or text messages.

- (3) None of the districts identified below shall be utilized as a hotel.
- (b) *Previously existing short-term rentals in specified districts.*** For a period of six months after 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.
- (1) ***Eligibility:*** Properties within the RM-1 and TH zoning districts in the Flamingo Park and Espanola Way Historic Districts. 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:
    - (A) For apartment buildings of four or more units, or for four or more apartment units in one or more buildings under the same City of Miami Beach Resort Tax ("resort tax") account. In order to demonstrate current, consistent and



predominant short-term renting, the property must comply with all of the following:

- (i) Have been registered with the city for the payment of resort tax and made resort tax payments as of March 10, 2010; and
- (ii) Have had 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
- (iii) 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 subsections (b)(1)(A)(i)—(iii) above.

- (B) 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:
  - (i) 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.

(2) *Time periods for the districts identified in subsection (b)(1) to apply for short-term rental approvals.*

- (A) Owners demonstrating compliance with subsection (b)(1) above, shall apply for a certificate of use permitting short-term rental as detailed in subsection 142-1111(f), within a time period of six months from June 19, 2010, or be deemed ineligible to proceed through the process specified herein for legalization of short-term rentals.
- (B) Within three months of 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.
- (C) 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.
- (D) Applications under this section may be accepted until 60 days after April 11, 2012, upon determination to the planning director that a government licensing error prevented timely filing of the application.

(3) *Eligibility within the Collins Waterfront Local Historic District.* Owners of property located in the Collins Waterfront Local Historic District shall be eligible to apply for approval of a certificate of use permitting short-term rental of apartment and

townhome residential units under the requirements and provisions set forth below:

- (A) Only those properties located south of West 24th Terrace shall be eligible for short-term rentals.
  - (B) Only buildings classified as "contributing" in the city's historic properties database shall be eligible for short-term rentals. The building and property shall be fully renovated and restored in accordance with the Secretary of the Interior Guidelines and Standards, as well as the certificate of appropriateness criteria in chapter 118, article X of these Land Development Regulations.
  - (C) The property must have registered with the State of Florida as a transient or condominium pursuant to Chapter 509, Florida Statutes, as of the effective date of this ordinance.
  - (D) The property must have registered with the city for the payment of resort tax and made resort tax payments as of as of the effective date of this ordinance.
  - (E) Residential 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 townhouses. A property owner of an apartment building, townhome or condominium must provide written notification to those long-term tenants (prospective or current tenants with leases of six months and one day or longer), providing affirmative notice that short-term rentals are expressly permitted throughout the building or at the premises.
  - (F) Any property seeking to have short-term rental will need to demonstrate that there is on-site management, 24 hours per day, seven days a week.
  - (G) The short-term rental use requires at least a seven-night reservation.
- (4) *Time period to apply for short-term rental approvals for those properties located in the Collins Waterfront Architectural District.*
- (A) Owners demonstrating compliance with subsection (b)(3), above, shall apply for a certificate of use permitting short-term rental as detailed in subsection 142-1111(e) within the time period of April 1, 2017 through September 30, 2017, or be deemed ineligible to proceed through the process specified herein for legalization of short-term rentals.
  - (B) Within the application time period of this ordinance, eligible owners shall have obtained all the necessary approvals to comply with the Florida Building Code, Florida Fire Prevention Code and with all other applicable life safety standards.
  - (C) Compliance with the applicable requirements of the Florida Building Code and Florida Fire Prevention Code, shall be demonstrated by the effective date of this ordinance, 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 the building or fire departments from undertaking enforcement action prior to such date.

- (5) In the event a building approved for short-term rentals in accordance with subsections (b)(3) and (4), above, is demolished or destroyed, for any reason, the future use of any new or future building on that property shall not be permitted to engage in short-term rentals, nor apply for short-term rental approval.
- (c) *Regulations.* For those properties eligible for short-term rental use as per (b) 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 districts identified in subsection (b). 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 any 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 (c)(1) above, are not prohibited by the association's governing documents, shall be submitted to the city as part of the application.
- (10) *Variances.* No variances may be granted from the requirements of this section.
- (d) *Eligibility within North Beach.* Properties that have buildings classified as "contributing" in the North Shore National Register Historic District and are zoned RM-1 may be eligible to apply for approval of a certificate of use permitting short-term rental of apartment and townhome residential units. Eligibility set forth herein, is limited to those properties fronting Harding Avenue, including buildings and properties located east of Harding Avenue and west of the alley, from the city line on the north, to 73rd Street on the south, and may be eligible for short-term rentals, provided, the following conditions, requirements, and provisions are satisfied:
  - (1) Short-term rentals, for those buildings classified as "contributing" in the North Shore National Register Historic District, must be fully renovated and restored in accordance with the Secretary of the Interior Guidelines and Standards, as well as the certificate of appropriateness criteria in chapter 118, article X of these land development regulations, prior to the issuance of a business tax receipt permitting short-term rentals at the property.
  - (2) Apartment buildings, townhomes or condominiums under the same City of Miami Beach Resort Tax ("resort tax") account must demonstrate current and consistent short-term renting, and the property must comply with all of the following:
    - (A) Have registered with the city for the payment of resort tax, or made resort tax payments; and
    - (B) Have registered with the State of Florida as a transient apartment or resort condominium pursuant to F.S. ch. 509.

- (3) Property owners demonstrating compliance with subsection (d) above, must apply for a certificate of use permitting short-term rental, or be deemed ineligible to proceed through the process specified herein for legalization of short-term rentals.
- (4) Eligible property owners must 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.
- (5) Compliance with the applicable requirements of the Florida Building Code and Florida Fire Prevention Code must be demonstrated proper to the issuance of the certificate of use, or rights to engage in short-term rental under this subsection 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.
- (6) The short-term rental use requires at least a seven-night reservation.
- (7) In the event a building approved for short-term rentals in accordance with this subsection, is demolished or destroyed, for any reason, the future use of any new or future building on that property shall not be permitted to engage in short-term rentals, nor apply for short-term rental approval.
- (8) Regulations. For those properties eligible for short-term rental use as per (d) may be permitted to engage in short-term rentals, provided that the following mandatory requirements are followed:
  - (A) Approvals required: applications. Property owners 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 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 below, if applicable.
  - (B) The application for a certificate of use permitting short-term rentals shall be accompanied by an application fee of \$1,000.00.
  - (C) 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.
  - (D) 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 500 feet of the property that is engaged in short-term rental pursuant to subsection (d). 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.

- (E) Entire unit. 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.
  - (F) A property owner of an apartment building, townhome or condominium must provide written notification to those long-term tenants (prospective or current tenants with leases of six months and one day or longer), providing affirmative notice that short-term rentals are expressly permitted throughout the building or at the premises.
  - (G) 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.
  - (H) 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.
  - (I) 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 any 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.
  - (J) Resort taxes. Property owners are subject to resort taxes for rentals under this section, as required by city law.
  - (K) 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 (d) above, are not prohibited by the association's governing documents, shall be submitted to the city as part of the application.
  - (L) Variances. No variances will be granted from the requirements of this section.
- (e) *Enforcement.*

- (1) Violations of subsection 142-1111(a) shall be subject to the following fines as provided in Chapter 162, Florida Statutes.<sup>5</sup> ~~The special master shall not waive or reduce fines set forth herein.~~

~~A. If the violation is the first violation: \$20,000.00.~~

~~B. If the violation is the second violation within the preceding 18 months: \$40,000.00.~~

~~C. If the violation is the third violation within the preceding 18 months: \$60,000.00.~~

~~D. If the violation is the fourth violation within the preceding 18 months: \$80,000.00.~~

~~E. If the violation is the fifth or greater violation within the preceding 18 months: \$100,000.00, and the suspension or revocation of the certificate of use.~~

Fines for repeat violations by the same offender shall increase regardless of locations. The director of the code compliance department must remit a letter to the Miami-Dade Property Appraiser and the Miami-Dade Tax Collector, with a copy of the special master order adjudicating the violation, that notifies these governmental agencies that the single-family residential property was used for the transient rental or occupancy at the premises.

- (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 procedures for enforcement of subsection 142-1111(a) and alternative enforcement of subsection 142-1111(b) as provided in chapter 30 of this Code, subject to fines as provided in Ch. 162, Florida Statutes. 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 (c)(3) above.
- (4) The advertising or advertisement for the transient rental, occupancy or short-term rental of the apartment or townhouse residential property for the purpose of allowing a rental for a period of less than six months and one day at the apartment

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<sup>5</sup> "... 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.



or townhouse residential premises is direct evidence that there is a violation of subsection 142-1111(a), which is admissible in any proceeding to enforce subsection 142-1111(a). The advertising or advertisement evidence raises rebuttable presumption that the residential property named in the notice of violation or any other report or as identified in the advertising or advertisement is direct evidence that the residential property was used in violation of section 142-1111(a).

- (5) Enhanced penalties. The following enhanced penalties must be imposed, in addition to any mandatory fines set forth in this subsection 142-1111(d)(e), ~~above~~, for violations of subsection 142-1111(a):

A. Enhanced penalties for violation of subsection 142-1111(a):

1. The transient rental or occupancy must be immediately terminated, upon confirmation that a violation has occurred, by the Miami Beach Police Department and the Code Compliance Department.
- ~~2. If the offense is a second offense within the preceding 18-month period of time, and the total square footage of all building(s), accessory building(s), dwelling(s), or structure(s) exceed 5,000 square feet, then the special master must impose an additional fine of \$25,000.00.~~
- 3 2. A certified copy of an order imposing the civil fines and penalties must be recorded in the public records, and thereafter shall constitute a lien upon any other real or personal property owned by the violator and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. The certified copy of an order must be immediately recorded in the public records, and the city may foreclose or otherwise execute upon the lien.

## **SECTION 2. REPEALER.**

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

## **SECTION 3. 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 as of their original adoption date.

## **SECTION 4. 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 5. EFFECTIVE DATE.**

This Ordinance shall take effect on \_\_\_\_\_, 2020.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**ATTEST:**

\_\_\_\_\_  
Rafael E. Granado, City Clerk

\_\_\_\_\_  
Dan Gelber, Mayor

First Reading: September 29, 2020

Second Reading: October 14, 2020

Verified By: \_\_\_\_\_  
Thomas R. Mooney, AICP  
Planning Director

APPROVED AS TO FORM AND  
LANGUAGE AND FOR EXECUTION

Paul G. F. 10-6-20  
City Attorney NK Date