



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

MEMORANDUM

TO: Commissioner Ricky Arriola, Chair
Land Use and Sustainability Committee

FROM: Rafael A. Paz, City Attorney

DATE: February 15, 2023

SUBJECT: **DISCUSSION REGARDING THE APPLICABILITY OF THE CITY'S LAND DEVELOPMENT REGULATIONS (LDRs) TO THE CO-OWNERSHIP OF SINGLE-FAMILY HOMES**

Background

This item was originally referred to the Land Use and Sustainability Committee ("LUSC") by the City Commission on October 13, 2021 (Item C4G), at the request of the late Commissioner Mark Samuelian. The item is now sponsored by Commissioner Alex J. Fernandez.

Pacaso, a tech startup based in San Francisco, recently announced that it is expanding into the South Florida real estate market. Pacaso's business model is to facilitate fractional ownership in single-family vacation homes. Investors can purchase as little as a one-eighth (1/8) interest in each home. According to the attached article published in The Real Deal, "[t]hrough a network of local real estate agents, Pacaso helps investors set up limited liability companies for joint ownership, and collects fees from the buyers to manage, maintain, and facilitate access to the home" On its website, Pacaso states that properties may be "used only by owners and registered guests," and "no rentals [are] allowed." (Source: <https://www.pacaso.com/blog/what-is-short-term-rental>).

City Code Section 142-905 prohibits the lease of single-family homes for periods of time less than six months and one day (i.e. on a "short-term" basis). Similarly, City Code Section 142-1111 prohibits the lease of apartment units or townhomes in specified zoning districts for periods of less than six months and one day. The City's short-term rental prohibitions apply to single-family homes and applicable apartments or townhomes regardless of how the property is owned (e.g., whether owned by a single owner or multiple owners, or through a corporate entity).

Analysis

At the request of the LUSC, the attached proposed City Code amendment has been drafted to adopt business regulations for individuals or entities that manage co-owned housing units. The Ordinance requires a co-owned housing unit manager to obtain a

business tax receipt ("BTR"), and includes a registration requirement; property maintenance requirements (including landscaping, structural maintenance, paint, repair, and trash collection); a code of conduct applicable to each owner; and provides for code enforcement.

For properties in districts where short-term rentals are prohibited (including all single-family districts), a co-owned housing unit manager and all individual owners will be required to sign an affidavit acknowledging that, pursuant to the Land Development Regulations, short-term rentals are prohibited on the property.

The City does not have the legal authority to restrict individuals from acquiring property through a corporate entity, or to adopt building or zoning regulations based on the form or manner in which a property is owned (for example, whether by one or more individuals, through a corporate entity or trust, or as a condominium or cooperative). See, e.g., Sections 718.507, 719.507, and 721.25, Florida Statutes.

However, the City Attorney's Office believes that the City Commission does have legislative authority to adopt reasonable business regulations on the management of co-owned housing units.

CONCLUSION

If the LUSC transmits the proposed Ordinance with a favorable recommendation, the Ordinance will be placed on an upcoming City Commission meeting agenda for First Reading.

RAP/NK

**CHAPTER 18
BUSINESSES**

* * *

Article XIX. Co-owned housing unit managers

Sec. 18-940. – Co-owned housing unit managers

(a) Definitions

- (1) For purposes of this section, a “Co-owned Housing Unit” means a residential dwelling unit managed by a Co-owned Housing Unit Manager and utilized exclusively for dwelling, lodging, or sleeping purposes by owners or members of an LC, LLC, partnership, or corporation that owns the dwelling unit, as well as authorized guests who have not provided compensation to any party for use of the unit.
- (2) For purposes of this section, a “Co-owned Housing Unit Manager” means a person, corporation, trust, or entity that manages a Co-owned Housing Unit, including providing cleaning services and maintenance of the Co-owned Housing Unit, on behalf of the owners of the Co-owned Housing Unit.
- (b) No Co-owned Housing Unit Manager shall engage in the business of managing a Co-owned Housing Unit within the city without first having secured a current business tax receipt for such activity.
- (c) A Co-owned Housing Unit Manager must comply with the following minimum requirements and management regulations:

 - (1) A Co-owned Housing Unit Manager must maintain a physical office located in Miami-Dade County or, alternatively, must identify a designated responsible party that is a property management company, real estate broker or agent, lawyer, owner, or other individual, who resides within 25 miles of the property. The designated responsible party must be available by telephone, or otherwise, twenty-four (24) hours per day, and must be able to respond to telephone inquiries within two (2) hours of the receipt of an inquiry. The designated responsible party is also designated as the agent for receiving all official communications from the City. The name, physical address, email address, and telephone number associated with any Co-owned Housing Unit Manager or designated responsible party shall be provided to the City in writing, and written notice of any change to the foregoing shall promptly be provided to the City.
 - (2) As applicable only to Co-owned Housing Units that are located in zoning districts where short-term rentals are prohibited, the Co-owned Housing Unit Manager and each individual owner shall be required to sign a sworn affidavit agreeing and acknowledging that, pursuant to the Land Development Regulations, short-term rentals are prohibited in the Co-owned Housing Unit.
 - (3) A Co-owned Housing Unit Manager must provide or contract for the provision of yard maintenance services, including landscaping, weed control, and

irrigation to a level that is consistent with the level of landscaping and maintenance on adjoining and nearby properties.

- (4) A Co-owned Housing Unit Manager must provide or contract for the provision of structural maintenance services as necessary for the maintenance of any buildings on the property.
- (5) A Co-owned Housing Unit Manager must provide or contract for the provision of routine upkeep, including painting and repair, to a level that is consistent with the level of maintenance on adjoining or nearby properties.
- (6) A Co-owned Housing Unit Manager must provide or contract for the provision of trash collection which ensures that trash cans are not left at the curb for any period in excess of twenty-four (24) hours. The property must be kept free from accumulated garbage and refuse.
- (7) Co-owned Housing Units may not be used for commercial uses not otherwise permitted in the applicable zoning district.
- (8) No outdoor display of goods and merchandise shall be permitted.
- (9) A Co-owned Housing Unit Manager must require the co-owners of any Co-owned Housing Unit to adopt and adhere to a Code of Conduct that includes compliance with the requirements of this section, including:
 - a. A prohibition on hosting any events or party that would cause disruption to the neighborhood.
 - b. Requiring owners to adhere to quiet hours from 9:00 pm to 7:00 am each night.
 - c. Requiring owners to park in a designated garage or driveway unless street parking is essential.
 - d. Requiring owners to comply with every applicable requirement of this Code, including without limitation Chapter 46, Article III ("Litter") and Article IV ("Noise Ordinance"); Chapter 58 (including applicable property maintenance requirements); Chapter 90 (including applicable sanitation requirements); and all applicable zoning requirements in the Land Development Regulations.
- (d) Any violation of the requirements of this section or any other provision of this Code by a Co-owned Housing Unit Manager shall subject the Co-owned Housing Unit Manager to code enforcement proceedings under Chapter 30 of this Code.