

## COMMISSION MEMORANDUM

**TO:** Mayor Dan Gelber and Members of the City Commission  
Alina T. Hudak, City Manager

**FROM:** Rafael A. Paz, City Attorney 

**DATE:** April 28, 2023

**SUBJECT:** A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, URGING CITY OF MIAMI BEACH PROPERTY OWNERS, THROUGH THEIR RESPECTIVE CONDOMINIUM AND COMMUNITY ASSOCIATIONS, AND WITH THE ADVICE OF ASSOCIATION COUNSEL, TO AMEND THEIR GOVERNING DOCUMENTS, TO PROHIBIT OR REGULATE SHORT TERM RENTAL AGREEMENTS IN THEIR COMMUNITIES PURSUANT TO APPLICABLE LAW, IN ORDER TO ADDRESS THE QUALITY OF LIFE ISSUES ASSOCIATED WITH THE PROLIFERATION OF SHORT TERM RENTAL UNITS IN THE CITY.

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The purpose of this proposed agenda item, sponsored by Commissioner Alex J. Fernandez, is to provide relevant information and sample language to Condominium Associations and certain Homeowner Associations<sup>1</sup> (collectively, "Associations"), to facilitate the private efforts of Association boards to decide for themselves whether to prohibit short-term rentals (rentals for periods of less than six months and one day) in their buildings and/or communities. Although the Florida Legislature has "preempted" local governments and restricted the City's ability to prohibit short-term rentals by law, the Florida Legislature has not prohibited Associations from adopting provisions in their respective governing documents to ban short-term rentals and assert local control over the character and tranquility of their buildings.

Accordingly, this Memorandum outlines the legal framework and steps that Associations may follow, with the advice of their Association counsel, to amend their governing documents to prohibit short-term rentals in their buildings and thereby protect their residents' quality of life.

### ANALYSIS

In 2011, the Florida Legislature adopted a new law, providing that local governments are only permitted to enforce the short-term rental prohibitions that they had in place prior to June 1, 2011. Prior to June 1, 2011, the City banned short-term rentals in single family residential

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<sup>1</sup> The term Homeowners Association or "HOA", as provided herein, only refers to mandatory residential homeowner associations that are subject to a Declaration of Covenants which subject the parcels within the Association to restrictive covenants and provide that owners of the parcels (typically single-family homes, multi-family homes or townhomes) must be members of the Association.

zoning districts. However, at that time, the City allowed short-term rentals in certain multi-family and commercial zoning districts.

Accordingly, based on Section 509.032(7)(b), Florida Statutes, in those zoning districts where short-term rentals were allowed as of June 1, 2011, such as certain multi-family or commercial zoned districts, the City cannot prohibit short-term rentals altogether, or restrict their duration or frequency. As a result of the legal restrictions imposed on the City by legislators in Tallahassee, the City instead regulates these short-term rentals to the maximum extent possible, by imposing requirements on the conduct of short-term rental business activity in the City, such as requiring registration of units, requiring payment of resort taxes for short-term rentals, and establishing minimum compliance standards with respect to occupancy, parking, noise, and other matters.

Unlike the City, however, Associations can do more to control short-term rental activity in their respective buildings. Properties that are part of Associations and subject to the restrictions set forth in a recorded Condominium Declaration, HOA Declaration of Covenants, or any other governing document for an Association (collectively, "Governing Documents"), have the ability to regulate or prohibit short-term rental agreements in communities that are subject to restrictive covenants.

Florida law requires that a seller provide a purchaser of a property that is located within an Association with certain disclosures/documents, so that buyer knows he/she will be required to become a member of either a Condominium Association (Section 718.503, Florida Statutes) or Homeowner Association (Section 720.401, Florida Statutes), as applicable, as well as other material terms and conditions governing the purchase of a property that is subject to an Association.

#### Condominium Properties:

Pursuant to Section 718.110(13)<sup>2</sup>, Florida Statutes, a copy of which is attached hereto, an amendment to the Condominium Association's Governing Documents, prohibiting unit owners from renting their units on a short-term basis, or altering the duration of the rental term, or specifying or limiting the number of times unit owners are entitled to rent their units during a specified period, **applies only to unit owners who consent to the amendment and unit owners who acquire title to their units after the effective date of the amendment.**

Accordingly, with the advice of counsel, Condominium Association boards should consider amending their Governing Documents to assert control over short-term rental activity in their buildings. In such event, the restrictions would apply to every unit that consents to the amendment, and then over time as properties are sold, the restrictions will apply to all new

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<sup>2</sup> The original language of Section 718.110(13), 2004 Florida Statutes, contained similar prospective application, as follows:

"(13) Any amendment restricting unit owners' rights relating to the rental of units applies only to unit owners who consent to the amendment and unit owners who purchase their units after the effective date of the amendment."



owners of properties in the Association. Such efforts could significantly limit and mitigate the adverse effects that short-term rental activity has on Association buildings and residents' quality of life.

HOA Communities:

Pursuant to Section 720.306((1)(h)(1), Florida Statutes, a copy of which is attached hereto, an amendment to an HOA Declaration of Covenants, or any other Governing Document or amendment thereto, that is enacted after July 1, 2021, and that prohibits or regulates rental agreements applies only to a parcel owner who acquires title to the parcel after the effective date of the Governing Document or amendment, or to a parcel owner who consents, individually or through a representative, to the Governing Document or amendment. Notwithstanding the foregoing, pursuant to Section 720.306(1)(h)(2), Florida Statutes, an HOA Association may amend its Governing Documents to prohibit or regulate rental agreements for a term of less than six (6) months and may prohibit the rental of a parcel more than three (3) times in a calendar year, and such amendments shall apply to all parcel owners.

Below is sample language, portions of which have been included in the Governing Documents of various Associations in Miami-Dade County, which presently limit or prohibit short-term rental activity. Associations boards should consider this sample language and review these provisions with their Association counsel, to determine whether it is in the best interest of the Association to amend their Governing Documents to include similar provisions. By way of example only, the provisions could include the following:

1. The listing of Units on any website or other medium for short-term occupancy, swap or vacation rental, such as AirBnB or VRBO is strictly prohibited. [As to Condominium and HOA Governing Documents, the foregoing section would apply only to a Unit Owner who acquires title to the Unit after the effective date of this Amendment, or to a Unit Owner who consented to this Amendment.]
2. There shall be a 90 day minimum lease term for any lease. In no event may Units or rooms be rented out as temporary, short-term or hotel-like lodging such as is offered through AirBnb, VRBO and similar companies, or any Unit be listed anywhere online or in print as being available for rent on a temporary, short-term or hotel-like lodging basis. Any individuals arriving in the Condominium who are not already residents or approved tenants will be treated as unauthorized short-term renters and not as guests so long as a Unit is advertised for short-term rental. Unit Owners found to be in violation of the leasing restrictions contained in this paragraph may be subject to having their rights to lease suspended for a period of time as may be reasonably determined by the Association. [As to a Condominium Declaration, the foregoing rental restriction would apply only to a Unit Owner who acquires title to the Unit after the effective date of this Amendment, or to a Unit Owner who consented to this Amendment.][As to an HOA Declaration of Covenants, the foregoing 90 day minimum lease term would apply to all Unit Owners.]
3. All leases shall be for residential purposes only and shall not be for a term shorter than twelve (12) months. Short-term rental of a dwelling, defined as less than twelve (12)

months, is prohibited. Further, it is prohibited to advertise or list dwellings for short-term rental on such 3rd party platforms as AirBnb, HomestoGo.com, VRBO.com, Zillow.com or any other companies or platforms now known or in the future who facilitate and/or broker short term rentals. A dwelling must be leased in its entirety, no individual rooms may be leased. [As to Condominium and HOA Governing Documents, the foregoing rental restriction would apply only to a dwelling owner who acquires title to the dwelling after the effective date of this Amendment, or to a dwelling owner who consented to this Amendment.]

4. Leasing. The Lease of a Living Unit is defined as occupancy of the Living Unit by any person other than the Living Unit Owner, whether pursuant to a verbal or written agreement, where said occupancy by the non-Owner involves consideration (the payment of money, the exchange of goods or services, any other exchange of value, etc.). "Lease" specifically includes, but is not limited to, arrangements such as those facilitated by AirBnb, FlipKey, VRBO, Tripping.com, House Trip, Luxury Retreats, HomeAway, or similar sites, regardless of whether the arrangements are classified or described as something other than a Lease (for example, but without limitation, classifying the arrangement as a license, rental, guest occupancy, or use right). The term "leasing" and "renting" shall be used interchangeably for the purpose of this Declaration. The term "Tenant" and "lessee" shall likewise be used interchangeably. No individual rooms may be rented and no transient Tenants may be accommodated, including, without limitation, offering the Living Unit for use akin to a hostel, hotel, "bed and breakfast," vacation rental, or "Airbnb-like" arrangements. "Rent-sharing" and subleasing is prohibited. In no event may Living Units be rented out as temporary, short-term or hotel-like lodging such as is offered through AirBnb, VRBO and similar companies. [As to Condominium and HOA Governing Documents, the foregoing rental restriction would apply only to a Living Unit Owner who acquires title to the Living Unit after the effective date of this Amendment, or to a Living Unit Owner who consented to this Amendment.]
  
5. All Leases shall be for a minimum period of six (6) months. No Owner, nor anyone on their behalf, shall publish or cause to be published any advertisement, notice, solicitation or communication of any type in any form of media, including but not limited to television, radio, internet website, newspaper, magazine, or trade publication, that indicates that a Living Unit may be leased for anything less than the minimum period of six (6) months. Additionally, the rental of a Living Unit more than three (3) times in a calendar year is prohibited. Without limiting any other Association remedies for violations, all Owners are hereby deemed to authorize the Association to send a copy of this provision to any applicable leasing agent or realtor, or to the publisher or operator of any such sites or media outlet, as instruction that any advertisement that does not comply with the foregoing provision be immediately removed. [As to a Condominium Declaration, the foregoing rental restriction would apply only to a Living Unit Owner who acquires title to the Living Unit after the effective date of this Amendment, or to a Living Unit Owner who consented to this Amendment.] [As to an HOA Declaration of Covenants, the foregoing rental restriction would apply to all Owners, regardless of when the Living Unit was purchased."]



## **CONCLUSION**

At the request of Commissioner Alex J. Fernandez, the sponsor of this item, the foregoing Memorandum is provided for the convenience of Associations, to facilitate Association board discussions regarding short-term rentals in their buildings and/or communities. Associations should consult with their attorneys to ascertain the legal requirements for amending their Governing Documents to take steps to restrict short term rentals. Under existing law, at a minimum, the unit/parcel owners in Condominium Associations who vote for the short-term rental restrictions will be included in the pool of restricted units/parcels, and moving forward, the remaining units/parcel owners will be subject to the short-term rental restrictions upon the sale of the units/parcels. All unit/parcel owners in Homeowner Associations that prohibit or regulate rental agreements for a term of no less than six (6) months, or which prohibit the rental of a parcel more than three (3) times in a calendar year, would be subject to the restrictions, immediately upon the approval of the amendment to the HOA Declaration.

## **ATTACHMENTS**

Section 102-386 of the City Code;  
Section 102-387 of the City Code;  
Section 718.110(13), Florida Statutes; and  
Sections 720.306(1)(h)(1) and 720.306(1)(h) (2), Florida Statutes  
Resolution

RAP/ag