

ORDINANCE NO.

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 102 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "TAXATION," BY AMENDING ARTICLE V, ENTITLED "LOCAL BUSINESS TAX," BY AMENDING SECTION 102-356 THEREOF, ENTITLED "CONSTRUCTION OF ARTICLE; DEFINITIONS," TO CREATE DEFINITIONS FOR "GEOFENCING," "HOSTING PLATFORM," AND "PLATFORM"; BY AMENDING SECTION 102-386 THEREOF ENTITLED "PROPERTY OWNERS' RESPONSIBILITIES REGARDING LEGALLY PERMISSIBLE TRANSIENT RENTAL AND OCCUPANCY (SHORT TERM) OF RESIDENTIAL PROPERTY," BY REQUIRING PROPERTY OWNERS TO DISPLAY THEIR BUSINESS TAX RECEIPT AND RESORT TAX CERTIFICATE NUMBERS ON ANY LISTINGS ADVERTISING THEIR PROPERTY; BY CREATING SECTION 102-387 THEREOF, TO BE ENTITLED "HOSTING PLATFORMS' RESPONSIBILITIES REGARDING LEGALLY PERMISSIBLE TRANSIENT RENTAL AND OCCUPANCY (SHORT TERM) OF RESIDENTIAL PROPERTY," BY REQUIRING HOSTING PLATFORMS TO ONLY PUBLISH LISTINGS THAT CONTAIN BUSINESS TAX RECEIPT AND RESORT TAX CERTIFICATE NUMBERS AND ESTABLISHING A PENALTY PROVISION FOR VIOLATIONS OF THIS SECTION; AND, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach (the "City") is an internationally renowned tourist destination, and

WHEREAS, the rental of single-family and multi-family residential properties for periods of less than six months and one day is generally prohibited by the City's Land Development Regulations ("LDRs"), with very limited exceptions, and

WHEREAS, property owners of single and multi-family residence(s) or unit(s) continue to unlawfully engage in the transient rental and occupancy of residences and units in violation of the Code of the City of Miami Beach (the "City Code"), which creates excessive numbers of guests, vehicles, and noise, and cause inappropriate adverse impacts on the surrounding residences and residential neighborhood, and

WHEREAS, the City has a substantial interest in ensuring and maintaining the aesthetics, character, and tranquility of its residential neighborhoods, as well as ensuring compliance with those City Codes regarding these commercial activities, and the following narrowly tailored provisions directly advance these City interests, and

WHEREAS, owners of residential properties or units seeking to engage in the transient rental or occupancy of such properties or units will be legally required to provide their City Business Tax Receipt Number and Resort Tax Certification Number on any listings advertising their property, and

WHEREAS, hosting platforms will be legally required to only publish residential rental listings that include the City Business Tax Receipt Number and Resort Tax Certification Number, and

WHEREAS, the City Commission finds that the following regulations are consistent with and further the public health, safety, and welfare of the City, and must be adopted to accomplish the above objectives

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

SECTION 1. That Section 102-356 of Article V of Chapter 102 of the Code of the City of Miami Beach is hereby amended as follows:

CHAPTER 102

TAXATION

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ARTICLE V. Local Business Tax

Sec. 102-356. – Construction of articles; definitions

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Geofencing or geocoding or any type of computational process of transforming a physical address description to a location on the Earth's surface means converting addresses into geographic coordinates and using them to virtually define a real-world geographical boundary. As used in this Article, an established geofence will trigger an automatic response prohibiting the property from being listed on the hosting platform when a person enters an address that is within a zoning district that prohibits short-term rentals.

Guard, watchman, patrol includes any person, who, for consideration, advertises as providing or is engaged in the business of furnishing watchman, guard, patrol, or armored car services or who, for consideration, transports prisoners. This includes any person, who utilizes dogs to perform security services unless otherwise excluded.

Hosting platform, advertisement platform, or short-term residential rental advertising platform means ~~any person who uses a platform~~ an internet-enabled application, mobile application, or any other digital platform that is used to connect guests with a short-term residential rental provider for the purpose of renting a short-term residential rental.

Hotel means a building occupied or intended to be occupied generally for transient occupancy

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Person means any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular

~~Platform means an internet-enabled application, mobile application, or any other digital platform used by a short-term residential intermediary to connect guests with a property owner for the purpose of transient rental and short-term occupancy~~

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Seller of travel, travel bureau means any person maintaining a business location or branch office within the city who offers for sale, directly or indirectly, at wholesale or retail, prearranged travel or tourist-related services for individuals or groups through vacation or tour packages or through lodging or travel certificates in exchange for a fee, commission or other valuable consideration. This includes offering membership in a travel club or travel services for an advance fee or payment, even if no travel contracts or certificates or vacation or tour packages are sold

Short-term residential rental means a dwelling unit located within the City that is rented as, or held out as being used as, a shared housing unit, bed-and-breakfast establishment, or vacation rental.

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SECTION 2. That Section 102-386 of Article V of Chapter 102 of the Code of the City of Miami Beach is hereby amended as follows

CHAPTER 102

TAXATION

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ARTICLE V. Local Business Tax

Sec. 102-386. Property owner's responsibilities regarding legally permissible transient rental and occupancy (short-term) of residential property.

Prior to receiving a business tax receipt, resort tax registration certificate or advertising the property, a property owner must comply with the following provisions

- (a) An owner of a residential property is prohibited from advertising the residential property, or any portion thereof, for its transient rental or occupancy, unless
 - (1) The property owner submits an affidavit to the city, under penalty of perjury, for each residential property or unit (or any portion thereof), which states that the property owner
 - a Has confirmed that the city's land development regulations, which are applicable to the residential property, authorize the property owner to engage in the transient rental or occupancy of the residential property or unit, and

- b Has obtained a business tax receipt that has been issued to the property owner for the purpose of engaging in the transient rental or occupancy of the residential property or unit, as authorized by the city's land development regulations, and
 - c Has registered the residential property with the city finance director, and obtained the appropriate resort tax registration certificate pursuant to chapter 102, article IV, division 4 of this Code;
 - d Has complied with those applicable requirements of the American Disabilities Act Regulations and design standards, as may be required for the residential property or unit, in conjunction with attaining compliance with the Florida Fire Prevention Code and the Florida Building Code,
 - e Has obtained written authorization from the condominium association that expressly authorizes the property owner to engage in the transient rental or occupancy of the residential property or unit. The written authorization must be attached to, and incorporated within, the affidavit submitted to the City of Miami Beach,
 - f Has disclosed the business tax receipt number for each residential property or unit in the advertisement, and that the property owner has fully complied with those provisions set forth within section 102-386
- (b) Notwithstanding the requirements of subsection (a), a property owner of a residential unit(s), which is located within an apartment-hotel or a condominium-hotel, must disclose within the affidavit that each prospective guest receives written notification that the unit(s) is/are not affiliated with the primary hotel operator at the property, and whether or not the prospective guest is entitled to those benefits and amenities that are offered by the primary hotel operator. The advertisement of the residential unit(s) by the property owner must include a disclaimer that the unit(s) is/are not affiliated with the primary hotel operation at the property and whether or not there is entitlement to those benefits and amenities that may be offered by the primary hotel operator. A property owner of a residential unit(s), as set forth herein must provide the contact information (name, telephone number and email address) to the guest at the time of the reservation of the non-affiliated unit(s) at the property
- (c) Each property owner shall provide and conspicuously display the City-issued business tax receipt number and the resort tax certificate number in every advertisement or listing of any type in connection with the rental of the residential property. Failure to comply with this requirement shall create a rebuttable presumption that the residential property is being operated without the proper registration.
- (e) (d) Penalties and enforcement
- (1) A violation of this section shall be subject to the following fines
 - a. If the violation is the first offense, a person or business shall receive a written warning,
 - b. If the violation is the second violation within the preceding six months, a person or business shall receive a civil fine of \$5,000 00,
 - c. If the violation is the third violation within the preceding six months, a person or business shall receive a civil fine of \$7,500 00, and

- d If the violation is the fourth or subsequent violation within the preceding six months, a person or business shall receive a civil fine of \$10,000 00 and the business tax receipt shall be revoked

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SECTION 3. That Article V of Chapter 102 of the Code of the City of Miami Beach is hereby amended to create Section 102-387 entitled “Hosting Platforms’ Responsibilities regarding legally permissible transient rental and occupancy (short-term) of residential property,” as follows

CHAPTER 102

TAXATION

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ARTICLE V. Local Business Tax

Sec. 102-387. Platforms’ Responsibilities Regarding Legally Permissible Transient Rental and Occupancy (Short-Term) of Residential Property.

Prohibitions for publishing property listings on hosting platforms, advertisement platforms or short-term residential rental advertisement platforms, Requiring Business Tax Receipt Number and Resort Tax Certificate Number.

- A Each platform under this Article V, Section 102-387 will not list, or permit any person to list, any short-term residential rental on its platform, unless the platform
 - (1) Posts a notice, in a conspicuous place on its website, advising short-term residential rental providers and property owners that such providers are required under this Article V, Section 102-386 to obtain a City-issued business tax receipt and a resort tax registration certificate in order to list a rental property on a hosting platform, advertisement platform or a short-term residential rental advertising platform; and
 - (2) Must display the property owner’s City-issued business tax receipt number and resort tax registration certificate number for each listing that appears on a short-term residential rental advertising platform, hosting platform or advertisement platform
- B Penalties and enforcement
 - (1) A violation of this section shall be subject to the following fines
 - a If the violation is the first offense, a person or business shall receive a civil fine of \$1,000 00,
 - b If the violation is the second violation within the preceding six months, a person or business shall receive a civil fine of \$2,000.00,
 - c If the violation is the third violation within the preceding six months, a person or business shall receive a civil fine of \$3,000 00, and

d. If the violation is the fourth or subsequent violation within the preceding six months, a person or business shall receive a civil fine of \$5,000.00.

(2) Enforcement. The Code Compliance Department shall enforce this section. This shall not preclude other law enforcement agencies from any action to assure compliance with this section and all applicable laws. If a violation of this section is observed, the Code enforcement officer will be authorized to issue a notice of violation. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before a special master within ten (10) days after service of the notice of violation, and that the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.

(3) Rights of violators, payment of fine, right to appeal, failure to pay civil fine or to appeal, appeals from decisions of the special master.

a. A violator who has been served with a notice of violation must elect to either

i. pay the civil fine in the manner indicated on the notice of violation, or

ii. request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten (10) days of the service of the notice of violation.

b. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.

c. If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master may be informed of such failure by report from the Code enforcement officer. The failure of the named violator to appeal the decision of the Code enforcement officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.

d. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. On or after the sixty-first (61st) day following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien.

- e. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
- f. The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the notice of violation
- g. The special master shall not have discretion to alter the penalties prescribed in subsection B (1)

C Exceptions This section shall not apply to

- 1) Any platforms that integrate geofencing or geocoding within their respective mobile or web-based applications that prohibit property owners from listing those properties that are within a zoning district that prohibits short-term rentals
- 2) Enforcement The exceptions set forth herein shall be valid, provided that the hosting platform submits a certificate to the Code Compliance Department of the City of Miami Beach, verifying that the geofencing or geocoding is active and effective. The Certificate must be submitted to the City on the first day of each month, unless the first day of the month falls on a Saturday, Sunday, or a legal holiday.
 - a. Any hosting platform that knowingly submits a false certification of an active and effective geocode or geofence to the City shall be punished in accordance with Section 1-14 of the City Code
 - b. A hosting platform will not be held in violation of this section in an event of a property owner providing a false address that falls within a zoning district that allows short-term rentals and after booking, personally directing the guest to a different property located within a zoning district that prohibits short-term rentals. However, in an event that a hosting platform discovers the falsity of the provided property address, it must disclose the falsity and the identity of the property owner to the City within 15 days of the discovery. Should the hosting platform fail to disclose property owner's misconduct, the hosting platform shall be punished in accordance with Section 1-14 of the City Code.
 - c. Any person or property owner who knowingly commits the act described in 102-387(C)(2)(b) or any other act done to bypass a hosting platform's geofencing or geocoding in order to list properties within a zoning district that prohibits short-term rentals, shall be punished in accordance with Section 1-14 of the City Code

SECTION 4. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed

SECTION 5. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity

SECTION 6. 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 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 7. EFFECTIVE DATE.

This Ordinance shall take effect on the ____ day of _____, 2018.

PASSED AND ADOPTED this ____ day of _____, 2018.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

Underline denotes additions

~~Strikethrough~~ denotes deletions

Double underline denotes additions after First Reading

~~Double strikethrough~~ denotes deletions after First Reading

(Sponsored by Mayor Dan Gelber)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

[Signature] 9-5-18
City Attorney Date