

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 102-387 THEREOF, ENTITLED "HOSTING PLATFORMS' RESPONSIBILITIES REGARDING LEGALLY PERMISSIBLE TRANSIENT RENTAL AND OCCUPANCY (SHORT TERM) OF RESIDENTIAL PROPERTY," BY CLARIFYING THAT HOSTING PLATFORMS THAT INTEGRATE GEOFENCING OR GEOCODING WITHIN THEIR ONLINE PLATFORMS MUST STILL COMPLY WITH THE PROVISIONS IN SUBSECTION 102-387(A); AND, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach (the "City") is considered an internationally renowned tourist destination; 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, advertisement platforms, or short-term residential rental advertisement platforms will be legally required to disclose those 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 amendment is consistent with and furthers the public health, safety, and welfare of the City, and must be adopted to codify the intent of the City.

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

SECTION 1. That Section 102-387 of Article V of Chapter 102 of the Code of the City of Miami Beach is hereby amended as follows:

CHAPTER 102

TAXATION

* * *

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 d~~Displays 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 appear; 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~~ Penalties listed in subsection (B)(1) 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) Platforms that integrate geofencing or geocoding within their respective mobile or web-based applications must still comply with the provisions of subsection (A) herein.

2) 3) 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 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3. SEVERABILITY.

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

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 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 the ____ day of _____, 2019.

PASSED AND ADOPTED this ____ day of _____, 2019.

ATTEST:

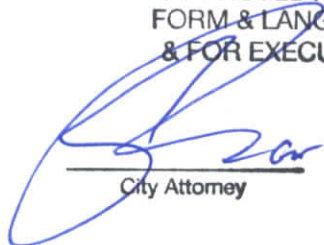
Dan Gelber, Mayor

Rafael E. Granado, City Clerk

Underline denotes additions
~~Strikethrough~~ denotes deletions

(Sponsored by Mayor Dan Gelber)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

1/8/19
Date