

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### PLANNING BOARD

TO: Chairperson and Members  
Planning Board

DATE: September 22, 2020

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **PB20-0397. Short Term Rental Fine Amendments.**

**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..

#### **RECOMMENDATION**

Transmit the proposed ordinance to the City Commission with a favorable recommendation.

#### **HISTORY**

On September 16, 2020, at the request of Mayor Dan Gelber, the City Commission referred the item to the Planning Board (Item C4 I).

#### **REVIEW CRITERIA**

Pursuant to Section 118-163 of the City Code, in reviewing a request for an amendment to these land development regulations, the board shall consider the following when applicable:

1. **Whether the proposed change is consistent and compatible with the comprehensive plan and any applicable neighborhood or redevelopment plans.**

**Consistent** – The proposed ordinance is consistent with the goals, objectives, and policies of the Comprehensive Plan.

2. **Whether the proposed change would create an isolated district unrelated to adjacent or nearby districts.**

**Consistent** – The proposed amendment does not change the boundaries of any districts.

3. **Whether the change suggested is out of scale with the needs of the neighborhood or the city.**

**Consistent** - The proposed change does not affect neighborhood scale.

4. **Whether the proposed change would tax the existing load on public facilities and infrastructure.**

**Consistent** – The proposed ordinance will not affect the load on public facilities and infrastructure in any manner.

5. **Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.**

**Not applicable** – The proposed amendment does not modify district boundaries.

6. **Whether changed or changing conditions make the passage of the proposed change necessary.**

**Consistent** – These amendments have been drafted in order for the City to comply with the Third District Court of Appeal's July 22, 2020 decision in *City of Miami Beach vs. Nichols*, finding that the City was preempted by Florida law from imposing its own fines for violations of short-term rental restrictions, and since the City's fine structure exceeded those established by Chapter 162, Florida Statutes, the City's fines were thus unlawful.

7. **Whether the proposed change will adversely influence living conditions in the neighborhood.**

**Consistent** – The proposed ordinance amendment will not adversely influence living conditions in the city's neighborhoods.

8. **Whether the proposed change will create or excessively increase traffic congestion beyond the levels of service as set forth in the comprehensive plan or otherwise affect public safety.**

**Consistent** – The proposed change will not create or increase traffic congestion from what is currently permitted.

9. **Whether the proposed change will seriously reduce light and air to adjacent areas.**

**Consistent** – The proposed change will in no way impact light and air in the City.

10. **Whether the proposed change will adversely affect property values in the adjacent area.**

**Consistent** – The proposed change should not adversely affect property values in the adjacent areas.

11. **Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.**

**Consistent** – The proposed change should not be a deterrent to the improvement or development of properties in the City.

12. **Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.**

**Not Applicable** – The proposed change has no impact on uses or existing zoning requirements.

13. **Whether it is impossible to find other adequate sites in the city for the proposed use in a district already permitting such use.**

**Not applicable.**

#### **COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA**

Section 133-50(b) of the Land Development Regulations establishes the following review criteria when considering ordinances, adopting resolutions, or making recommendations:

- (1) **Whether the proposal affects an area that is vulnerable to the impacts of sea level rise, pursuant to adopted projections.**

**Consistent** – The proposal does affect areas that are vulnerable to the impacts of sea level rise in the long term, however it has no impacts on construction.

- (2) **Whether the proposal will increase the resiliency of the City with respect to sea level rise.**

**Consistent** – The proposal will have no impact to the resiliency of the City.

- (3) **Whether the proposal is compatible with the City's sea level rise mitigation and resiliency efforts.**

**Consistent** – The proposal is not relevant to and has no impact on the City's sea level rise mitigation and resiliency efforts.

#### **ANALYSIS**

The Ordinance proposes to amend the City's short-term rental regulations for the limited purpose of deleting the fine amounts specified therein (including the corresponding restriction on the Special Master's inability to waive or reduce said fines) and substituting in their place those fine amounts set forth in Chapter 162, Florida Statutes.<sup>1</sup> These amendments have been drafted in order for the City to comply with the Third District Court of Appeal's July 22, 2020 decision in *City of Miami Beach vs. Nichols*, enjoining enforcement of the City's short-term rental regulations

---

<sup>1</sup> The amendments only affect the fines imposed for violations of the short-term rental regulations (and delete the corresponding restriction on the Special Master's inability to waive or reduce said fines); they 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 subject short-term rental ordinances.

in City Code Sections 142-905(b)(5) and 142-1111, based upon its finding that the City was preempted by Florida law from imposing its own fines for violations of short-term rental restrictions, and since the City's fine structure exceeded those established by Chapter 162, Florida Statutes, the City's fines were thus unlawful.

**RECOMMENDATION**

In view of the foregoing analysis, staff recommends that the Planning Board transmit the proposed ordinance amendment to the City Commission with a favorable recommendation.