

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Planning Board

TO: Chairperson and Members
Planning Board

DATE: December 20, 2016

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **Ordinance Amendment**
Short Term Rentals in the Collins Waterfront Local Historic District

REQUEST

PB016-0079. SHORT TERM RENTALS IN THE COLLINS WATERFRONT LOCAL HISTORIC DISTRICT. AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, SUBPART B, ENTITLED "LAND DEVELOPMENT REGULATIONS," OF CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," BY AMENDING DIVISION 2, ENTITLED "ACCESSORY USES"; BY AMENDING ARTICLE IV, ENTITLED "SUPPLEMENTARY DISTRICT REGULATIONS," BY AMENDING DIVISION 3, ENTITLED "SUPPLEMENTARY USE REGULATIONS," BY AMENDING SECTION 142-1111(b)(3), ENTITLED "ELIGIBILITY WITHIN THE COLLINS WATERFRONT LOCAL HISTORIC DISTRICT," BY MODIFYING THE USE LIMITATIONS WITHIN A BUILDING BASED UPON OWNERSHIP; BY AMENDING SECTION 142-1111(b)(4), ENTITLED "SHORT-TERM RENTAL OF APARTMENT UNITS OR TOWNHOMES," BY ESTABLISHING A NEW TIME PERIOD FOR OWNERS OF PROPERTY IN THE COLLINS WATERFRONT LOCAL HISTORIC DISTRICT TO APPLY FOR APPROVAL OF A CERTIFICATE OF USE THAT PERMITS SHORT-TERM RENTAL OF APARTMENT AND TOWNHOME RESIDENTIAL UNITS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

RECOMMENDATION

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

HISTORY

On June 8, 2016, at the request of Commissioner John Elizabeth Aleman, the City Commission referred the subject ordinance to the Land Use and Development Committee and Planning Board (Item C4Q). On June 15, 2016, the Land Use and Development Committee discussed the ordinance and recommended that the Planning Board approve the item.

On August 23, 2016 the Planning Board reviewed the Ordinance and transmitted it to the City Commission with a favorable recommendation.

On October 19, 2016, the City Commission reviewed the Ordinance at First Reading. The City Commission requested additional modifications to the Ordinance, pertaining to unit ownership and allowable short and long term rental periods. Due to the changes necessary to

accommodate these changes, the Title of the Ordinance needed to be modified, and the ordinance was re-referred back to the Planning Board for review.

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 uses proposed by the ordinance amendment are 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.**

Not Applicable – The proposed does not modify district boundaries.

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

Consistent – The proposed Ordinance will not modify the scale of development.

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

Consistent – The proposed will not modify the intensity of development.

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

Consistent – The boundaries of the Collins Waterfront Local Historic District are logically drawn and not affected by the proposed ordinance.

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

Consistent – The desire to allow uses short term rentals for qualifying buildings that did not meet the timeframe requirements during the previous window to allow for such uses the last time the window was opened.

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

Consistent – The proposed change will not adversely affect living conditions in the neighborhood as several short term rentals already leagally exist in the area.

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 allow not create or excessively increase traffic congestion beyond the levels of service set forth in the Comprehensive Plan.

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

Consistent – The proposal will not reduce light and air to adjacent areas.

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 proposal will allow for short-term rentals for eligible properties, which will incentivize the improvement those properties. This should encourage the improvement of adjacent properties.

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

Not applicable.

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.

ANALYSIS

The proposed ordinance amendment modifies section 142-1111(b)(4), of the Land Development Regulations to reopen the window for 'contributing buildings' located south of West 24th Terrace in the Collins Waterfront Local Historic District to apply for a certificate of use to permit short-term rentals. A three month window was previously provided by the City Commission on February 11, 2015. The proposed ordinance would provide for a window between February 1, 2017 and July 31, 2017 to apply for short-term rentals.

The previous window allowed for the Tradewinds building complex, which had been renovated, to allow for short-term rentals. However, there was some uncertainty with other buildings in the applicable boundaries of the Collins Waterfront area, in which some other owners believed that they were grandfathered to allow for short-term rentals. As a result of this uncertainty, other buildings in the area did not meet the benchmarks required to allow for the entire building to permit short-term rentals. Owners within these buildings have expressed support to allow for short-term rentals, especially since many of the units are small, and therefore not ideal for long-term rentals.

In addition to the modification noted above, the ordinance has been updated to remove the requirement that short term rental use shall be based on a single use for the property. This requirement had prohibited short term rentals in buildings that also have non-transient residential uses. In this regard, the following language is proposed for section 142-1111

(b)(3)(E):

- (E) ~~Short-term rental use shall be based on a single use for the property. No building or property seeking to have short-term rentals will be permitted to have mixed residential uses.~~

Residential Apartment units and townhomes, as defined in section 114-1, legally created pursuant to applicable law, may be rented under this section, not individual rooms or separate portions of apartment units or townhomes. A property owner of an apartment building, townhome or condominium must provide written notification to those long-term tenants (prospective or current tenants with leases of six (6) months and one (1) day or longer), providing affirmative notice that short-term rentals are expressly permitted throughout the building or at the premises

Due to the limited area and window to authorize short-term rentals, it is not expected that the proposed ordinance will create negative impacts to the surrounding community. The benchmarks already in place to authorize short-term rentals provide safeguards against any potential negative impacts that may come about as a result of the use.

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.

TRM/MAB

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, SUBPART B, ENTITLED "LAND DEVELOPMENT REGULATIONS," OF CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," BY AMENDING DIVISION 2, ENTITLED "ACCESSORY USES"; BY AMENDING ARTICLE IV, ENTITLED "SUPPLEMENTARY DISTRICT REGULATIONS," BY AMENDING DIVISION 3, ENTITLED "SUPPLEMENTARY USE REGULATIONS," BY AMENDING SECTION 142-1111(b)(3), ENTITLED "ELIGIBILITY WITHIN THE COLLINS WATERFRONT LOCAL HISTORIC DISTRICT," BY MODIFYING THE USE LIMITATIONS WITHIN A BUILDING BASED UPON OWNERSHIP; BY AMENDING SECTION 142-1111(b)(4), ENTITLED "SHORT-TERM RENTAL OF APARTMENT UNITS OR TOWNHOMES," BY ESTABLISHING A NEW TIME PERIOD FOR OWNERS OF PROPERTY IN THE COLLINS WATERFRONT LOCAL HISTORIC DISTRICT TO APPLY FOR APPROVAL OF A CERTIFICATE OF USE THAT PERMITS SHORT-TERM RENTAL OF APARTMENT AND TOWNHOME RESIDENTIAL UNITS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the rental of multi-family residential properties for periods of less than six months and one day are prohibited by the Land Development Regulations ("LDRs"); and

WHEREAS, the City desires to amend the existing regulations pertaining to the short-term rental of apartments and townhomes in the Collins Waterfront Local Historic District; and

WHEREAS, the amendment will apply for those properties located South of West 24th Terrace, and expressly permit a new time period to establish eligibility for permitted short-term rental of an apartment and townhome residential unit(s); and

WHEREAS, the City has determined that there is a potential for harm should transient rentals are permitted without appropriate regulations to protect adverse external effects of such an intensive use; and

WHEREAS, the condition, requirements and regulations set forth in this amendment are consistent with, and further the public health, safety and welfare of the City and its residences and visitors.

WHEREAS, the Mayor and City Commission find that this new application time period is consistent with the very limited and controlled commercial and transient use of residences in the Collins Waterfront Local Historic District.

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

SECTION 1. That Division 3, entitled "Supplementary Use Regulations," of Article IV, entitled "Supplementary District Regulations," of Chapter 142, entitled "Zoning Districts and Regulations," of the Code of the City of Miami Beach, Florida is hereby amended as follows:

Chapter 142

ZONING DISTRICTS AND REGULATIONS

* * *

ARTICLE IV. SUPPLEMENTARY DISTRICT REGULATIONS

* * *

DIVISION 3. SUPPLEMENTARY USE REGULATIONS

* * *

Sec. 142-1111. Short-term rental of apartment units or townhomes.

(a) Limitations and prohibitions.

- (1) Unless a specific exemption applies below, the rental of apartment or townhome residential properties in districts zoned RM-1, RM-PRD, RM-PRD-2, RPS-1 and RPS-2, CD-1, RO, R0-3 or TH for periods of less than six months and one day.
- (2) Any advertising or-advertisement that promotes the occupancy or use of the residential property for the purpose of holding commercial parties, events, assemblies, gatherings, or the occupancy of a residence for less than six months and one day, as provided herein, or use of the residential premises in violation of this section.

"Advertising" or "advertisement" shall mean any form of communication for marketing or used to encourage, persuade, or manipulate viewers, readers or listeners for the purpose of promoting occupancy of a residential property for the purpose of holding commercial parties, events, assemblies, gatherings, or the occupancy of a residence for less than six months and one day, as provided herein, upon the premises, as may be viewed through various media, including, but not limited to, newspaper, magazines, flyers, handbills television commercial, radio advertisement, outdoor advertising, direct mail, blogs, websites or text messages.

- (3) None of the districts identified below shall be utilized as a hotel.

- (b) *Previously existing short-term rentals in specified districts.* For a period of six months after June 19, 2010, owners of certain properties located in the following districts shall be eligible to apply for approval of a certificate of use permitting short-term rental of apartment and townhome residential units for these properties under the requirements and provisions set forth below.

- (1) *Eligibility:* Properties within the RM-1 and TH zoning districts in the Flamingo Park and Espanola Way Historic Districts. Those properties that can demonstrate a current and consistent history of short-term renting, and that such short-term rentals are the primary source of income derived from that unit or building, as defined by the requirements listed below:

- (A) For apartment buildings of four or more units, or for four or more apartment units in one or more buildings under the same City of Miami Beach Resort Tax ("resort

tax") account. In order to demonstrate current, consistent and predominant short-term renting, the property must comply with all of the following:

- (i) Have been registered with the city for the payment of resort tax and made resort tax payments as of March 10, 2010; and
- (ii) Have had resort tax taxable room revenue equal to at least 50 percent of total room revenue over the last two-year period covered by such payments; and
- (iii) Have been registered, with the State of Florida as a transient apartment or resort condominium pursuant to Chapter 509, Florida Statutes, as of March 10, 2010.

For properties containing more than one apartment building, eligibility may apply to an individual building satisfying subsections (b)(1)(A)(i)—(iii) above.

- (B) For apartment and townhouse buildings of three or less units, or for three or less apartment units in one or more buildings under the same state license. In order to demonstrate current, consistent and predominant short-term renting, the property must:

- (i) Have been registered with the State of Florida as a resort dwelling or resort condominium pursuant to Chapter 509, Florida Statutes, as of March 10, 2010.

- (2) *Time periods for the districts identified in subsection (b)(1) to apply for short-term rental approvals.*

- (A) Owners demonstrating compliance with subsection (b)(1) above, shall apply for a certificate of use permitting short-term rental as detailed in subsection 142-1111(f), within a time period of six months from June 19, 2010, or be deemed ineligible to proceed through the process specified herein for legalization of short-term rentals.

- (B) Within three months of June 19, 2010, eligible owners shall apply to obtain all necessary approvals to comply with the Florida Building Code, Florida Fire Prevention Code and with all other applicable life safety standards.

- (C) Compliance with the applicable requirements of the Florida Building Code and Florida Fire Prevention Code shall be demonstrated by October 1, 2011, or rights to engage in short-term rental under this section shall be subject to restrictions and/or limitations as directed by the building official and/or fire marshal. This subsection shall not prevent these officials from undertaking enforcement action prior to such date.

- (D) Applications under this section may be accepted until 60 days after April 11, 2012, upon determination to the planning director that a government licensing error prevented timely filing of the application.

- (3) *Eligibility within the Collins Waterfront Local Historic District.* Owners of property located in the Collins Waterfront Local Historic District shall be eligible to apply for approval of a certificate of use permitting short-term rental of apartment and townhome residential units under the requirements and provisions set forth below:

- (A) Only those properties located south of West 24th Terrace shall be eligible for short-term rentals.

- (B) Only buildings classified as "contributing" in the city's historic properties database shall be eligible for short-term rentals. The building and property shall be fully

renovated and restored in accordance with the Secretary of the Interior Guidelines and Standards, as well as the certificate of appropriateness criteria in chapter 118, article X of these Land Development Regulations.

- (C) The property must have registered with the State of Florida as a transient or condominium pursuant to Chapter 509, Florida Statutes, as of the effective date of this ordinance.
- (D) The property must have registered with the city for the payment of resort tax and made resort tax payments as of as of the effective date of this ordinance.
- (E) ~~Short-term rental use shall be based on a single use for the property. No building or property seeking to have short-term rentals will be permitted to have mixed residential uses.~~

Residential Apartment units and townhomes, as defined in section 114-1, legally created pursuant to applicable law, may be rented under this section, not individual rooms or separate portions of apartment units or townhomes. A property owner of an apartment building, townhome or condominium must provide written notification to those long-term tenants (prospective or current tenants with leases of six (6) months and one (1) day or longer), providing affirmative notice that short-term rentals are expressly permitted throughout the building or at the premises.

- (F) Any property seeking to have short-term rental will need to demonstrate that there is on-site management, 24 hours per day, seven days a week.
 - (G) The short-term rental use requires at least a seven-night reservation.
- (4) *Time period to apply for short-term rental approvals for those properties located in the Collins Waterfront Architectural District.*
- (A) Owners demonstrating compliance with subsection (b)(3), above, shall apply for a certificate of use permitting short-term rental as detailed in subsection 142-1111(e) within a the time period of three months from the effective date of this ordinance February 1, 2017 through July 31, 2017, or be deemed ineligible to proceed through the process specified herein for legalization of short-term rentals.
 - (B) ~~Within three months of the effective date of~~ the application time period of this ordinance, eligible owners shall have obtained all the necessary approvals to comply with the Florida Building Code, Florida Fire Prevention Code and with all other applicable life safety standards.
 - (C) Compliance with the applicable requirements of the Florida Building Code and Florida Fire Prevention Code, shall be demonstrated by the effective date of this ordinance, or rights to engage in short-term rental under this section shall be subject to restrictions and/or limitations as directed by the building official and/or fire marshal. This subsection shall not prevent the building or fire departments from undertaking enforcement action prior to such date.
- (5) In the event a building approved for short-term rentals in accordance with subsections (b)(3) and (4), above, is demolished or destroyed, for any reason, the future use of any new or future building on that property shall not be permitted to engage in short-term rentals, nor apply for short-term rental approval.

(c) *Regulations.* For those properties eligible for short-term rental use as per (b) shall be permitted, provided that the following mandatory requirements are followed:

- (1) *Approvals required: applications.* Owners, lessees, or any person with interest in the property seeking to engage in short-term rental, must obtain a certificate of use permitting short-term rental under this section. The application for approval to engage in short-term rentals shall be on a form provided for that purpose, and contain the contact information for the person identified in subsection (3) below, identify the minimum lease term for which short-term rental approval is being requested, and such other items of required information as the planning director may determine. The application shall be accompanied by the letter or documents described in subsection (9) below, if applicable.

The application for a certificate of use permitting short-term rentals shall be accompanied by an application fee of \$600.00.

- (2) *Time period.* All short-term rentals under this section must be pursuant to a binding written agreement, license or lease. Each such document shall contain, at a minimum: the beginning and ending dates of the lease term; and each lessee's contact information, as applicable. No unit may be rented more frequently than once every seven days.
- (3) *Contact person.* All rentals must be supervised by the owner, manager, or a local and licensed real estate broker or agent or other authorized agent licensed by the city, who must be available for contact on a 24-hour basis, seven days a week, and who must live on site or have a principal office or principal residence located within the districts identified in subsection (b). Each agreement, license, or lease, of scanned copy thereof, must be kept available throughout its lease term and for a period of one year thereafter, so that each such document and the information therein, is available to enforcement personnel. The name and phone number of a 24-hour contact shall be permanently posted on the exterior of the premises or structure or other accessible location, in a manner subject to the review and approval of the city manager or designee.
- (4) *Entire unit.* Only entire apartment units and townhomes, as defined in section 114-1, legally created pursuant to applicable law, may be rented under this section, not individual rooms or separate portions of apartment units or townhomes.
- (5) *Rules and procedures.* The city manager or designee may adopt administrative rules and procedures, including, but not limited to, application and permit fees, to assist in the uniform enforcement of this section.
- (6) *Signs.* No signs advertising the property for short-term rental are permitted on the exterior of the property or in the abutting right-of-way, or visible from the abutting public right-of-way.
- (7) *Effect of violations on licensure.* Approvals shall be issued for a one-year period, but shall not be issued or renewed, if violations on three or more separate days at the unit, or at another unit in any building owned by the same owner or managed by the same person or entity, of this section, issued to the short-term rental licensee were adjudicated either by failure to appeal from a notice of violation or a special master's

determination of a violation, within the 12 months preceding the date of filing of the application.

(8) *Resort taxes.* Owners are subject to resort taxes for rentals under this section, as required by city law.

(9) *Association rules.* Where a condominium or other property owners' association has been created that includes the rental property, a letter from the association dated not more than 60 days before the filing of the application, stating the minimum rental period and the maximum number of rentals per year, as set forth under the association's governing documents, and confirming that short-term rentals as proposed by the owner's application under subsection (c)(1) above, are not prohibited by the association's governing documents, shall be submitted to the city as part of the application.

(10) *Variances.* No variances may be granted from the requirements of this section.

(d) *Enforcement.*

(1) Violations of Subsection 142-1111(a) shall be subject to the following fines. The special master shall not waive or reduce fines set forth herein.

A. If the violation is the first violation: \$20,000.00.

B. If the violation is the second violation within the preceding 18 months: \$40,000.00.

C. If the violation is the third violation within the preceding 18 months: \$60,000.00.

D. If the violation is the fourth violation within the preceding 18 months: \$80,000.00.

E. If the violation is the fifth or greater violation within the preceding 18 months: \$100,000.00, and the suspension or revocation of the certificate of use.

Fines for repeat violations by the same offender shall increase regardless of locations. The Director of the Code Compliance Department must remit a letter to the Miami-Dade Property Appraiser and the Miami-Dade Tax Collector, with a copy of the Special Master Order adjudicating the violation, that notifies these governmental agencies that the single-family residential property was used for the transient rental or occupancy at the premises.

(2) In addition to or in lieu of the foregoing, the city may seek an injunction by a court of competent jurisdiction to enforce compliance with or to prohibit the violation of this section.

(3) Any code compliance officer may issue notices for violations of this section, with enforcement of subsection 142-1111(a) and alternative enforcement of subsection 142-1111(b) as provided in chapter 30 of this Code. Violations shall be issued to the owner, manager, real estate broker or agent, or authorized agent, or any other individual or entity that participates in or facilitates the violation of this section. In the event the record owner of the property is not present when the violation occurred or notice of violation issued, a copy of the violation shall be served by certified mail on the owner at its mailing address in the property appraiser's records and a courtesy notice to the contact person identified in subsection (c)(3) above.

(4) The advertising or advertisement for the transient rental, occupancy or short-term rental of the apartment or townhouse residential property for the purpose of allowing a rental for a period of less than six months and one day at the apartment or townhouse residential premises is direct evidence that there is a violation of Subsection 142-

1111(a), which is admissible in any proceeding to enforce Subsection 142-1111(a). The advertising or advertisement evidence raises rebuttable presumption that the residential property named in the Notice of Violation or any other report or as identified in the advertising or advertisement is direct evidence that the residential property was used in violation of Section 142-1111(a).

- (5) Enhanced penalties. The following enhanced penalties must be imposed, in addition to any mandatory fines set forth in Subsection 142-1111(d), above, for violations of Subsection 142-1111(a):

A. Enhanced Penalties for violation of Subsection 142-1111(a):

1. The transient rental or occupancy must be immediately terminated, upon confirmation that a violation has occurred, by the Miami Beach Police Department and the Code Compliance Department.
2. If the offense is a second offense within the preceding eighteen (18) month period of time, and the total square footage of all building(s), accessory building(s), dwelling(s), or structure(s) exceed 5,000 square feet, then the Special Master must impose an additional fine of \$25,000.00.
3. A certified copy of an order imposing the civil fines and penalties must be recorded in the public records, and thereafter shall constitute a lien upon any other real or personal property owned by the violator and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. The certified copy of an order must be immediately recorded in the public records, and the City may foreclose or otherwise execute upon the lien.

SECTION 3. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 4. SEVERABILITY.

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 5. 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 a 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 6. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED AND ADOPTED this ____ day of _____, 2017.

PHILIP LEVINE, MAYOR

ATTEST:

RAFAEL E. GRANADO, CITY CLERK

Underline denotes additions

~~Strikethrough~~ denotes deletions

(Sponsored by Commissioner John Elizabeth Alemán)