

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Planning Board

TO: Chairperson and Members
Planning Board

DATE: February 23, 2016

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **Ordinance Amendment**
Commercial Use of Single-Family Homes Prohibited
Permitted Accessory Uses in Single-Family Districts

REQUEST

File No. 2315. COMMERCIAL USE OF SINGLE-FAMILY HOMES PROHIBITED. 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 ARTICLE II, ENTITLED "DISTRICT REGULATIONS," BY AMENDING DIVISION 2, ENTITLED "RS-1, RS-2, RS-3, RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICTS," BY AMENDING SECTION 142-109, ENTITLED "COMMERCIAL USE OF SINGLE-FAMILY HOMES PROHIBITED," BY AMENDING SUBSECTION (c)(1)b., REQUIRING AN OWNER OR RESIDENT TO SUBMIT AN AFFIDAVIT TO THE CITY MANAGER IDENTIFYING THE LIMITED COMMERCIAL USE AT THE RESIDENTIAL PROPERTY; BY AMENDING SUBSECTION (d) THAT REQUIRES NOTIFICATION TO BE REMITTED TO THE TAX COLLECTOR AND PROPERTY APPRAISER BY THE CODE COMPLIANCE DIRECTOR, AND ESTABLISHING A REBUTTABLE PRESUMPTION STANDARD FOR ADVERTISING AND ADVERTISEMENT EVIDENCE, AND INCREASING THOSE MONETARY FINES FOR VIOLATIONS OF SECTION 142-109; BY CREATING SUBSECTION (f), ENTITLED "ENHANCED PENALTIES," WHICH ESTABLISHES ENHANCED PENALTIES FOR VIOLATIONS OF SECTION 142-109; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

File No. 2316. PERMITTED ACCESSORY USES IN SINGLE-FAMILY DISTRICTS. 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 SECTION 142-905, ENTITLED "PERMITTED ACCESSORY USES IN SINGLE-FAMILY DISTRICTS," BY AMENDING SUBSECTION (b)(5)a. WHICH INCREASES THE MONETARY FINES FOR VIOLATIONS OF SUBSECTION 142-905(b)(5), AND REQUIRING NOTIFICATION TO BE REMITTED TO THE MIAMI-DADE TAX COLLECTOR AND PROPERTY APPRAISER BY THE CODE COMPLIANCE DIRECTOR, BY ESTABLISHING A REBUTTABLE PRESUMPTION FOR ADVERTISING AND ADVERTISEMENT EVIDENCE; AND CREATING SUBSECTION (b)(5)b, ENTITLED "ENHANCEMENT PENALTIES," WHICH ESTABLISHES ENHANCED PENALTIES FOR

VIOLATIONS OF SUBSECTION (b)(5); BY AMENDING ARTICLE IV, ENTITLED "SUPPLEMENTARY DISTRICT REGULATIONS," BY AMENDING DIVISION 3, ENTITLED "SUPPLEMENTARY USE REGULATIONS," BY AMENDING SECTION 142-1111, ENTITLED "SHORT-TERM RENTAL OF APARTMENT UNITS OR TOWNHOMES," BY AMENDING SUBSECTION (d) WHICH INCREASES THE MONETARY FINES FOR VIOLATIONS OF SUBSECTION 142-1111(a), AND REQUIRING NOTIFICATION TO BE REMITTED TO THE MIAMI-DADE TAX COLLECTOR AND PROPERTY APPRAISER BY THE CODE COMPLIANCE DIRECTOR, BY ESTABLISHING A REBUTTABLE PRESUMPTION FOR ADVERTISING AND ADVERTISEMENT EVIDENCE; AND CREATING SUBSECTION (d)(5), ENTITLED "ENHANCED PENALTIES," WHICH ESTABLISHES ENHANCED PENALTIES FOR VIOLATIONS OF SUBSECTION 142-1111(a); AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

RECOMMENDATION

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

HISTORY/ BACKGROUND

On February 10, 2016, at the request of Mayor Levine, the City Commission approved the proposed ordinances on First Reading and transmitted them to the Planning Board.

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 amendment 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.**

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

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

Not applicable – The proposed Ordinance does not affect the scale of development.

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

Consistent – The proposed ordinance will not increase the level of intensity of development and will not affect the load on public facilities.

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

Not applicable – The proposed change does not modify existing district boundaries.

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

Consistent – The need to ensure the City's residents continue to enjoy their single and multifamily residences, and to make certain that the character and value of these residential neighborhoods and residences are protected and properly preserved makes the proposed change necessary.

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.

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.

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

Consistent – The proposed ordinance 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 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.

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 to Section 142-109 of the Miami Beach Code, which will modify several portions of the Ordinance, including a substantial increase in the monetary fines.

The proposed ordinance amendments are an important public policy component that will ensure the City's residents to the quiet enjoyment of their single and multifamily residences, and to make certain that the character and value of the residential neighborhoods and residences are protected and properly preserved. The City has a substantial interest in maintaining the aesthetics, character and tranquility of its residential neighborhoods, in conjunction with regulating the flow of traffic and impacts of transients rentals and occupancy, which these ordinance amendments directly advances these important governmental interests. These amendments will prohibit the unscrupulous conduct of those persons seeking to financial exploit the rental of single and multi-family residences, thereby creating adverse living conditions for the City residents that results in excessive number of guests, vehicle and noise that tragically impact these quiet residential communities.

RECOMMENDATION

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

TRM/MAB/RAM

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 ARTICLE II, ENTITLED "DISTRICT REGULATIONS," BY AMENDING DIVISION 2, ENTITLED "RS-1, RS-2, RS-3, RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICTS," BY AMENDING SECTION 142-109, ENTITLED "COMMERCIAL USE OF SINGLE-FAMILY HOMES PROHIBITED," BY AMENDING SUBSECTION (c)(1)b., REQUIRING AN OWNER OR RESIDENT TO SUBMIT AN AFFIDAVIT TO THE CITY MANAGER IDENTIFYING THE LIMITED COMMERCIAL USE AT THE RESIDENTIAL PROPERTY; BY AMENDING SUBSECTION (d) THAT REQUIRES NOTIFICATION TO BE REMITTED TO THE TAX COLLECTOR AND PROPERTY APPRAISER BY THE CODE COMPLIANCE DIRECTOR, AND ESTABLISHING A REBUTTABLE PRESUMPTION STANDARD FOR ADVERTISING AND ADVERTISEMENT EVIDENCE, AND INCREASING THOSE MONETARY FINES FOR VIOLATIONS OF SECTION 142-109; BY CREATING SUBSECTION (f), ENTITLED "ENHANCED PENALTIES," WHICH ESTABLISHES ENHANCED PENALTIES FOR VIOLATIONS OF SECTION 142-109; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the Land Development Regulations ("LDRs") restrict single-family and multi-family residential properties to residential and-compatible uses; and

WHEREAS, the City's "LDRs" restrict certain residential properties to residential and compatible accessory uses, and commercial uses on such properties are prohibited, except that the LDRs allow film and print permits, garage sales and home based businesses at such properties; and

WHEREAS, the Code Compliance Division has reported numerous instances of residential properties being advertised as party houses, and where the house is used for a commercial enterprise for parties instead of as a single family residential use; and

WHEREAS, residential properties used for commercial gatherings, creates excessive numbers of guests, vehicles and noise, causing inappropriate adverse impacts on the surrounding residences and residential neighborhood; and

WHEREAS, the City has a substantial interest in maintaining the aesthetics, character and tranquility of its residential neighborhoods, regulating traffic flow, and the amendment directly advances these interests which is narrowly tailored to serve those interests; and

WHEREAS, the advertisement of commercial events and transient occupancy of single and multi-family residences are more appropriately held in the zoning districts that are designed for such numbers of persons, with the impacts resulting therefrom more appropriately mitigated; and

WHEREAS, while residents are entitled to enjoy the use of their single residences consistent with the applicable regulations in the residential zoning districts, in order to ensure and protect the enjoyment, character and value of the residential neighborhoods and residences, the provisions herein are hereby adopted; and

WHEREAS, the City Commission finds that such regulations are consistent with, and further the public health, safety and welfare of the City.

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 2, entitled "RS-1, RS-2, RS-3, RS-4 Single-Family Residential Districts," of Article II, entitled "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 II. District Regulations

* * *

Division 2. RS-1, RS-2, RS-3, RS-4 Single-Family Residential Districts

* * *

Sec. 142-109. Commercial use of single-family homes prohibited.

- (a) Intent and purpose. The land development regulations restrict residential properties to residential and compatible accessory uses. Commercial uses on residential properties are prohibited, with limited exceptions. While residents are entitled to enjoy the use of their property consistent with the applicable regulations, in order to ensure and protect the enjoyment, character and value of residential neighborhoods and buildings, the provisions herein are established.
- (b) Definitions.
 - (1) Use of residential property or use of the property in this section shall mean occupancy of residential property for the purpose of holding commercial parties, events, assemblies or gatherings on the premises.
 - (2) 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 traditional media, including, but not limited to, newspaper, magazines, flyers, handbills, television commercial, radio advertisement, outdoor advertising, direct mail, blogs, websites or text messages.
- (c) Regulations: Determination of commercial use.
 - (1) Accessory use of residential property shall be deemed commercial and not permitted, except as otherwise provided for in the Code, if:

- a. Compensation to owner. The owner, lessee or resident receives payment or other consideration, e.g., goods, property or services, in excess of \$100.00 per party or event for the commercial use of the property, including payment by any means, direct or indirect, including security deposits; or
- b. Goods, property or services offered or sold. Goods, property or services are offered for sale or sold on or at the property, during use of the property; however, this subsection shall not apply, if:
 - 1. All of the goods, property or services offered are donated to or for charitable, religious or political organizations or candidates for public office, that have received 501(c)(3) or other tax exempt status under the U.S. Internal Revenue Code, as amended, or in accordance with applicable election laws; or
 - 2. All of the proceeds from sales are directly payable and paid to charitable, religious or political organizations or candidates for public office, that have received 501(c)(3) or other tax exempt status under the U.S. Internal Revenue Code, as amended, or in accordance with applicable election laws. An organization or candidate may reimburse donors for goods or property donated; or
 - 3. The sale is of the property itself or personal property of the owner or resident (excluding property owned by a business), and if publicly advertised, comply with subsection (3) below;
 - 4. Notwithstanding the restrictions in subsections (1)b.1—3., limited commercial use of the property by the owner or resident for the sale of goods, property or services shall be allowed under the following criteria. The event:
 - i. Is by private invitation only, not publicly advertised;
 - ii. Creates no adverse impacts to the neighborhood;
 - iii. The activity and its impacts are contained on the property;
 - iv. Parking is limited to that available on-site, plus 11 vehicles legally self-parked near the property, with no busing or valet service; and
 - v. Frequency is no greater than one (1) event per month; or
 - 5. The owner or resident must provide the City Manager an affidavit that identifies the limited commercial use of the residential property at least seventy-two (72) hours before the applicable limited commercial use is scheduled to commence pursuant to Subsection 142-109(c)(1)b., and the affidavit must include the applicable information set forth within subsections b.1. through b.4 setting forth detailed information supporting the exempted limited commercial use provided therein. The submission of a false affidavit is a misdemeanor of the second degree, punishing as provided in Sections 775.082 or 775.083 of the Florida Statutes; or
- c. Admittance fees. Use of the property by attendees requires an admittance or membership fee or a donation, excluding donations directly payable and paid by attendees to charitable, religious or political organizations or candidates for public office, that have received 501(c)(3) or other tax exempt status under the U.S. Internal Revenue Code, as amended, or in accordance with applicable election laws; or
- d. Any advertising that promotes the occupancy or use of the residential property for the purpose of holding commercial parties, events, assemblies, gatherings, or

advertisement that promotes 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.

- (2) Signs or advertising. Signs or other forms of advertising in connection with goods, property or services offered in connection with commercial use of the property, including the actual goods, property (except real property and structures thereon) or services, shall not be visible from the public right-of-way. This section shall not be construed to prohibit the display of real estate for sale or lease signs for the property.
- (3) Real estate open houses. The following events are permitted: Open houses (open to the public) organized for the purpose of promoting the sale or lease of the residence where the open house is located, to potential buyers or renters, or events organized by the listing agent limited to licensed real estate brokers and/or agents, subject to the following:
 - a. No sale or display of goods, property or services by sponsoring businesses unrelated to the property; and
 - b. No charging admittance fees.
 - c. Events described in this subsection must end by 8:00 p.m.

(d) Enforcement.

- (1) Violations of this section shall be subject to the following fines. The special master shall not waive or reduce fines set by this section.
 - a. If the violation is the first violation~~\$2,500.00~~ \$25,000.00
 - b. If the violation is the second violation within the preceding 18 months~~\$7,500.00~~ \$50,000.00
 - c. If the violation is the third violation within the preceding 18 months~~\$12,500.00~~ \$75,000.00
 - d. If the violation is the fourth or greater violation within the preceding 18 months~~\$20,000.00~~ \$100,000.00

Fines for repeat violations shall increase regardless of location. 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 purpose of holding a commercial party, event, assembly or gathering at the premises.

- (2) The advertising or advertisement for the commercial use of a residential property for the purpose of holding commercial parties, events, assemblies or gathering on the residential premises is direct evidence that there is a violation of Subsection 142-109(c), which is admissible in any proceeding to enforce Section 142-109. The advertising or advertisement evidence raises a 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 142-109.
- (2)(3) In addition to or in lieu of the foregoing, the city may close down the commercial use of the property and/or seek an injunction against activities or uses prohibited under this section.

- ~~(3)~~(4) Any city police officer or code compliance officer may issue notices for violations of this section, with alternative enforcement as provided in section 1-14 and chapter 39 of this Code. Violations shall be issued to the homeowner, and/or to any realtor, real estate agent, real estate broker, event planner, promoter, caterer, or any other individual or entity that facilitates or organizes the prohibited activities. In the event the record owner of the property is not present when the violation occurred, a copy of the violation shall be provided to such owner.
- ~~(4)~~(5) Charitable, religious or political organizations or candidates for public office shall receive one courtesy notice in lieu of the first notice of violation only, after which fines will accrue starting with the first violation as prescribed. No courtesy notice in lieu of first notice of violation shall be available if a courtesy notice in lieu of first notice of violation has already been granted in the preceding 18-month period, regardless of location.
- ~~(5)~~(6) The city recognizes peoples' rights of assembly, free expression, religious freedom, and other rights provided by the state and federal constitutions. It is the intent of the city commission that no decision under this section shall constitute an illegal violation of such rights, and this section shall not be construed as such a violation.
- ~~(6)~~(7) The city manager or designee may adopt administrative rules and procedures to assist in the uniform enforcement of this section.
- (e) No variances shall be granted from this section. This section does not authorize commercial activities in residential neighborhoods that are otherwise prohibited or regulated by applicable law, unless expressly provided for herein.
- (f) Enhanced penalties. The following enhanced penalties must be imposed, in addition to any mandatory fines set forth in Subsection 142-109(d) above, for violations of Section 142-109:
- (1) Enhanced Penalties for this Section:
- (a) The commercial use must be immediately terminated, upon confirming a violation has occurred, by the Miami Beach Police Department and the code Compliance Department.
- (b) If the offense is a second offense within the proceeding 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 total square feet, then the Special Master must impose an additional fine of \$50,000.00.
- (c) 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 2. REPEALER.

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

SECTION 3. 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 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 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 5. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED AND ADOPTED this ____ day of _____, 2016.

ATTEST:

RAFAEL GRANADO, CITY CLERK

Underscore denotes new language
~~Strike-through~~ denotes deleted language

(Sponsored by Mayor Philip Levine)

PHILIP LEVINE, MAYOR

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

Phil Levine 2-2-16
City Attorney Date

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 SECTION 142-905, ENTITLED "PERMITTED ACCESSORY USES IN SINGLE-FAMILY DISTRICTS," BY AMENDING SUBSECTION (b)(5)a. WHICH INCREASES THE MONETARY FINES FOR VIOLATIONS OF SUBSECTION 142-905(b)(5), AND REQUIRING NOTIFICATION TO BE REMITTED TO THE MIAMI-DADE TAX COLLECTOR AND PROPERTY APPRAISER BY THE CODE COMPLIANCE DIRECTOR, BY ESTABLISHING A REBUTTABLE PRESUMPTION FOR ADVERTISING AND ADVERTISEMENT EVIDENCE; AND CREATING SUBSECTION (b)(5)b, ENTITLED "ENHANCEMENT PENALTIES," WHICH ESTABLISHES ENHANCED PENALTIES FOR VIOLATIONS OF SUBSECTION (b)(5); BY AMENDING ARTICLE IV, ENTITLED "SUPPLEMENTARY DISTRICT REGULATIONS," BY AMENDING DIVISION 3, ENTITLED "SUPPLEMENTARY USE REGULATIONS," BY AMENDING SECTION 142-1111, ENTITLED "SHORT-TERM RENTAL OF APARTMENT UNITS OR TOWNHOMES," BY AMENDING SUBSECTION (d) WHICH INCREASES THE MONETARY FINES FOR VIOLATIONS OF SUBSECTION 142-1111(a), AND REQUIRING NOTIFICATION TO BE REMITTED TO THE MIAMI-DADE TAX COLLECTOR AND PROPERTY APPRAISER BY THE CODE COMPLIANCE DIRECTOR, BY ESTABLISHING A REBUTTABLE PRESUMPTION FOR ADVERTISING AND ADVERTISEMENT EVIDENCE; AND CREATING SUBSECTION (d)(5), ENTITLED "ENHANCED PENALTIES," WHICH ESTABLISHES ENHANCED PENALTIES FOR VIOLATIONS OF SUBSECTION 142-1111(a); AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

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

WHEREAS, single and multi-family residences used on a transient basis, 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 maintaining the aesthetics, character and tranquility of its residential neighborhoods, as well as in regulating traffic flow, and these amendments directly advances these interests by serving a narrowly tailored interest of the City; and

WHEREAS, the Mayor and City Commission finds that a substantial modification of this ordinance will prohibit this conduct and these amendments are consistent with and further the public health, safety and welfare of the City and its residents; and

WHEREAS, these amendments surrounding prohibited transient rentals in single-family districts and transient rental of apartment units or townhomes, are hereby adopted to accomplish the above objectives.

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 2, entitled "Accessory Uses," 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 2. ACCESSORY USES

* * *

Sec. 142-905. Permitted accessory uses in single-family districts.

- (a) Generally. Permitted accessory uses in single-family districts are those uses which are customarily associated with single-family houses such as, but not limited to, decks, swimming pools, spas, ornamental features, tennis courts. However, in no instance shall landing or storage areas for a helicopter, or other aircraft, be permitted as an accessory use. The planning and zoning director may allow other accessory uses if the director finds after consultation with the chairman of the planning board that they will not adversely affect neighboring properties, based upon the criteria listed in section 142-901. Appeal of the director's decision is to the board of adjustment pursuant to chapter 118, article VIII.
- (b) Permitted accessory uses. The following are permitted accessory uses in single-family districts:
 - (1) Day care facilities for the care of children are permitted if the following mandatory criteria are met:
 - a. A family day care facility shall be allowed to provide care for one of the following groups of children:
 - 1. A family day care home may care for a maximum of five preschool children from more than one unrelated family and a maximum of five elementary school siblings of the preschool children in care after school hours. The maximum number of five preschool children includes preschool children in the home and preschool children received for day care who are not related to the resident caregiver. The total number of children in the home may not exceed ten under this subsection.
 - 2. When the home is licensed and provisions are made for substitute care, a family day care home may care for a maximum of five preschool children from more than one unrelated family, a maximum of three elementary school siblings of the preschool children in care after school hours, and a maximum of two elementary school children unrelated to the preschool

children in care after school hours. The maximum number of five preschool children includes preschool children in the home and preschool children received for day care who are not related to the resident caregiver. The total number of children in the home may not exceed ten under this subsection.

3. When the home is licensed and provisions are made for substitute care, a family day care home may care for a maximum number of seven elementary school children from more than one unrelated family in care after school hours. Preschool children shall not be in care in the home. The total number of elementary school children in the home may not exceed seven under this subsection.
 - b. Signs on the property advertising the day care facility are prohibited.
 - c. The family day care facility complies with all applicable requirements and regulations of the state department of children and family services and the city's police, fire and building services departments. All of the South Florida Building Code, city property maintenance standards and fire prevention and safety code violations shall be corrected prior to the issuance of a city occupational license.
 - d. Play area shall only be located in the rear yard and equipment shall be limited to three pieces of equipment.
 - e. Day care is prohibited on Sundays.
 - f. The building shall maintain the external appearance of a single-family home.
 - g. Site plan shall be approved by the planning and zoning director. The plan shall include landscaping and a permitted wall or fencing enclosing the rear yard.
 - h. Family day care facilities shall not be located within 400 feet of another such facility; except that this restriction shall not apply to state-licensed family day care homes as defined in F.S. § 402.302(5).
- (2) The planning and zoning director may approve a second set of cooking facilities if the residence contains at least 3,600 square feet of floor area and the arrangement of such facilities or conditions at the property shall not result in the creation of an apartment unit. No more than one electric meter shall be placed on the property and that portion of the residence having the second set of cooking facilities shall not be rented. Appeal of the director's decision shall be to the board of adjustment.
- (3) Guest/servants quarters.
- (4) Home based business office, as provided in Section 142-1411.
- (5) Leases of single-family homes to a family (as defined in section 114-1) for not less than six months and one day, including extensions for lesser periods of leases permitted under this subsection to original leaseholders.
 - a.—The advertisement, as defined in Section 142-109(b), of single-family homes for a period of less than six months and one day shall not be permitted for single-family districts, and shall be a violation of this Section 142-905(b)(5).

b-a Enforcement.

1. Violations of subsection 142-905(b)(5)a. shall be subject to the following fines. The special master shall not waive or reduce fines set by this subsection.
 - A. If the violation is the first violation: ~~\$1,500.00~~ \$20,000.00

- B. If the violation is the second violation within the preceding 42 18 months:
~~\$3,000.00~~ \$40,000.00
- C. If the violation is the third violation within the preceding 42 18 months:
~~\$5,000.00~~ \$60,000.00
- D. If the violation is the fourth violation within the preceding 42 18 months:
~~\$7,500.00~~ \$80,000.00
- E. If the violation is the fifth or greater violation within the preceding 42 18 months: ~~\$10,000.00~~ \$100,000.00

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 transient rental or occupancy at the single-family residential 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 142-905(b)(5). 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 142-905(b)(5). 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.
 - 4. The advertising or advertisement for the transient rental or occupancy, short-term rental or rental for period(s) of less than six months and one day of the residential property for the purpose of allowing such transient rental or occupancy, short-term rental or rental for period(s) of less than six months and one day at the residential premises is direct evidence that there is a violation of Subsection 142-905(b)(5), which is admissible in any proceeding to enforce Section 142-905(b)(5). The advertising or advertisement evidence raises a 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 142-905(b)(5).
- b. Enhanced penalties. The following enhanced penalties must be imposed, in addition to any mandatory fines set forth in Subsection 142-905(b)(5) above, for violations of Subsection (b)(5):
- (1) Enhanced Penalties for Subsection (b)(5):
 - (a) 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.

- (b) If the offense is a second offense within the proceeding 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 total square feet, then the Special Master must impose an additional fine of \$25,000.00.
- (c) 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 2. 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, RO-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.
 - (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 time period of three months from the effective date of this ordinance, 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 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 ~~section~~ Subsection 142-1111(a),(b), or shall be subject to the following fines. The special master ~~may~~ shall not waive or reduce fines set by this section.

A. If the violation is the first violation: ~~\$500.00~~ \$20,000.00.

B. If the violation is the second violation within the preceding ~~42~~ 18 months: ~~\$1,500.00~~ \$40,000.00.

C. If the violation is the third violation within the preceding ~~42~~ 18 months: ~~\$5,000.00~~ \$60,000.00.

D. If the violation is the fourth violation within the preceding ~~42~~ 18 months: ~~\$7,500.00~~ \$80,000.00.

E. ~~If the violation is the fifth or greater violation within the preceding 12 months: suspension or revocation of the certificate of use allowing short-term rental~~ 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) and (c) 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 a 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 (d) above, for violations of Subsection 142-1111(a):

(1) Enhanced Penalties for Subsection 142-1111(a):

(a) 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.

(b) If the offense is a second offense within the proceeding 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 total square feet, then the Special Master must impose an additional fine of \$25,000.00.

(c) 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.

