

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Raul J. Aguila, City Attorney
DATE: December 14, 2016

10:10 a.m. Second Reading Public Hearing

SUBJECT: 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 102-377 THEREOF ENTITLED "PENALTIES, ENFORCEMENT; COLLECTION OF DELINQUENT FEES AND TAXES, AND CRIMINAL PENALTIES," BY ESTABLISHING A MODIFIED PENALTY AND ENFORCEMENT PROVISION WHICH DELINEATES MONETARY FINES AND CRIMINAL PENALTIES; BY CREATING SECTION 102-386 THEREOF TO BE ENTITLED "PROPERTY OWNER'S RESPONSIBILITIES REGARDING LEGALLY PERMISSIBLE TRANSIENT RENTAL AND OCCUPANCY (SHORT TERM) OF RESIDENTIAL PROPERTY," BY PROHIBITING PROPERTY OWNERS FROM ADVERTISING THE TRANSIENT RENTAL OR OCCUPANCY OF A RESIDENTIAL PROPERTY WITHOUT THE SUBMISSION OF AN AFFIDAVIT TO THE CITY, BY REQUIRING THE AFFIDAVIT TO CONFIRM THAT THE LAND DEVELOPMENT REGULATIONS AUTHORIZE TRANSIENT RENTAL AND OCCUPANCY; AND ENSURING THAT THE PROPERTY OWNER OBTAINS COMPLIANCE WITH THOSE PROVISIONS SET FORTH WITHIN CHAPTER 102, THE AMERICAN DISABILITIES ACT, THE FLORIDA FIRE PREVENTION CODE AND THE FLORIDA BUILDING CODE; AND BY FURTHER REQUIRING WRITTEN AUTHORIZATION FROM THE CONDOMINIUM ASSOCIATION FOR THE TRANSIENT RENTAL OR OCCUPANCY OF THE RESIDENTIAL PROPERTY OR UNIT; AND REQUIRING NOTIFICATION TO PROSPECTIVE GUESTS BY PROPERTY OWNERS THAT OPERATE INDEPENDENTLY OF THE PRIMARY HOTEL OPERATOR; AND ESTABLISHING A PENALTY PROVISION FOR VIOLATIONS OF THIS SECTION; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

ANALYSIS

Commissioner Joy Malakoff and Commissioner John Elizabeth Alemán have proposed an ordinance amendment to Chapter 102, by creating Section 102-386 that will be titled "Property Owner's Responsibilities Regarding Legally Permissible Transient Rental and Occupancy (Short Term) of Residential Property." Commissioner Michael Grieco has sought to be a co-

sponsor of this Ordinance at the July 13, 2016 Commission Meeting, which co-sponsor request was formally approved on July 13, 2016. The proposed ordinance was intended to prohibit property owners from advertising the transient rental or occupancy of a residential property without the submission of an Affidavit to the City. The Affidavit provision of the Ordinance will ensure that the property owner obtains compliance with the City Code, and confirm that the Land Development regulations authorize the transient rental or occupancy at the premises.

The proposed Ordinance was deemed to be an important public policy component that will 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. The City has a substantial interest in maintaining the aesthetics, character and tranquility of its residential neighborhoods, in conjunction with regulating the impacts of transients rentals and occupancy, which this proposed Ordinance directly advances as an important governmental interest.

The Mayor and City Commission held the first reading of this Ordinance on July 13, 2016, and determined that further amendments were necessary to ensure compliance with those provisions delineated within Chapter 102, and other technical codes recognized for these intense uses of residential properties or units. Specifically, there is a modification of the penalty and enforcement provision set forth in Section 102-377, and the inclusion of an additional requirement to ensure compliance with the American Disabilities Act, the Florida Building Code, and the Florida Fire Prevention Code.

This modified proposed Ordinance will further prohibit those persons seeking to financial exploit the rental of single and multi-family residences in those unpermitted zoning districts, thereby prohibiting the creation of adverse living conditions for the City residents, by preventing excessive number of guest(s), vehicle(s) and noise that tragically impact these quiet residential communities, and devastates the residential character of single-family and multi-family neighborhoods.

Legislative Tracking

Office of the City Attorney

Sponsor

Vice-Mayor Joy Malakoff & Commissioner John Elizabeth Aleman & Co-Sponsored by Comm. Michael Grieco

ATTACHMENTS:

Description

- ▢ Chapter 102 Taxation - Transient Rental and Occupancy - Short Term (Malakoff, Aleman, Grieco)

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 102-377 THEREOF ENTITLED "PENALTIES, ENFORCEMENT; COLLECTION OF DELINQUENT FEES AND TAXES, AND CRIMINAL PENALTIES," BY ESTABLISHING A MODIFIED PENALTY AND ENFORCEMENT PROVISION WHICH DELINEATES MONETARY FINES AND CRIMINAL PENALTIES; BY CREATING SECTION 102-386 THEREOF TO BE ENTITLED "PROPERTY OWNER'S RESPONSIBILITIES REGARDING LEGALLY PERMISSIBLE TRANSIENT RENTAL AND OCCUPANCY (SHORT TERM) OF RESIDENTIAL PROPERTY," BY PROHIBITING PROPERTY OWNERS FROM ADVERTISING THE TRANSIENT RENTAL OR OCCUPANCY OF A RESIDENTIAL PROPERTY WITHOUT THE SUBMISSION OF AN AFFIDAVIT TO THE CITY, BY REQUIRING THE AFFIDAVIT TO CONFIRM THAT THE LAND DEVELOPMENT REGULATIONS AUTHORIZE TRANSIENT RENTAL AND OCCUPANCY; AND ENSURING THAT THE PROPERTY OWNER OBTAINS COMPLIANCE WITH THOSE PROVISIONS SET FORTH WITHIN CHAPTER 102, THE AMERICAN DISABILITIES ACT, THE FLORIDA FIRE PREVENTION CODE AND THE FLORIDA BUILDING CODE; AND BY FURTHER REQUIRING WRITTEN AUTHORIZATION FROM THE CONDOMINIUM ASSOCIATION FOR THE TRANSIENT RENTAL OR OCCUPANCY OF THE RESIDENTIAL PROPERTY OR UNIT; AND REQUIRING NOTIFICATION TO PROSPECTIVE GUESTS BY PROPERTY OWNERS THAT OPERATE INDEPENDENTLY OF THE PRIMARY HOTEL OPERATOR; AND ESTABLISHING A PENALTY PROVISION FOR VIOLATIONS OF THIS SECTION; 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 is generally prohibited by the Land Development Regulations ("LDRs"), with very limited exceptions; and

WHEREAS, property owners of single and multi-family residence(s) or unit(s) continue to unlawfully engage in the transient rental and occupancy in violation of the City of Miami Beach Code of Laws and Ordinances (the "City Code"), which creates excessive number 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 this provision directly advances these interests by serving a narrowly tailored interest of the City; and

WHEREAS, the transient rental or occupancy of residential properties or units are more appropriately held in those specific zoning districts that are designed for such numbers of persons, with the impacts resulting therefrom more appropriately mitigated; and

WHEREAS, an owner of a residential property or unit seeking to engage in the transient rental or occupancy must obtain verification that the City's LDR's authorize the transient rental and occupancy of the residential property as a permitted use; and

WHEREAS, the submission of an affidavit to the City will ensure compliance with the City Code, and will establish confirmation by the property owner that there has been a verification of the LDR's for the transient rental and occupancy at the residential property; and

WHEREAS, the affidavit will identify that the property owner has obtained the appropriate business tax receipt, and mandate that a resort tax registration certificate has been acquired pursuant to Chapter 102 of the City Code; and

WHEREAS, an owner of a residential property or unit located within an apartment-hotel or condominium-hotel, which is not affiliated with the primary hotel operator (hotel pool of units), will be legally required to provide written notification to a prospective guest disclosing the non-affiliation with the primary hotel operator; and

WHEREAS, the City Commission finds that such a regulation is consistent with and furthers the public health, safety and welfare of the City, and must be adopted to accomplish the above objectives.

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

SECTION 1. That Chapter 102 entitled "Taxation," Article V entitled "Local Business Tax," of the Code of the City Miami Beach is hereby amended to amend Section 102-377 entitled "Penalties, enforcement; collection of delinquent fees and taxes, and criminal penalties," as follows:

**CHAPTER 102
TAXATION**

* * *

Article V. Local Business Tax.

Sec. 102-377. Penalties, enforcement; collection of delinquent fees and taxes, and criminal penalties.

- (a) Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the offense, which shall have a civil fine of \$1,000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d) herein.

The enforcement and appeal of the Notice of Violation shall be consistent with those requirements set forth in Section 102-386(C)(2).

(b) ~~or who~~ Any person who violates any other provision of this article shall be cited with a notice of violation as provided in ~~chapter 30~~ Section 102-386(C) of this Code, and shall may be subject to one or more of the following enforcement/collection procedures:

~~(1)~~ — Prosecution before the city's special master, as provided in ~~chapter 30~~, with penalties as set forth therein.

~~(1)~~(2) Suspension/revocation proceedings as set forth in sections 102-383 through 102-385.

~~(2)~~(3) Suit for injunctive relief to enjoin operation of the business in violation of this article.

~~(c)~~(b) As an additional means of enforcement/collection and supplemental to the above, when a notice or record of any past-due business tax/fees and penalties that become due and payable to the city after the effective date of this section is recorded in the public records of the county, the notice shall constitute a special assessment lien upon all real and personal property of the business owing such fees and penalties, and shall remain a lien equal in rank and dignity with the lien of ad valorem taxes, and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the property involved. Such liens may be foreclosed or levied upon in the manner provided by law.

~~(d)~~(e) In addition to the above, a continued violation of this section Subsection 102-377(a) for a period of thirty 30 days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.

~~(e)~~(d) As an additional means of enforcement and supplemental to the above, if any person carries on or conducts any business for which a tax receipt is required by this article without first obtaining such tax receipt, then the city may prevent the business from operating until the required tax receipt is obtained.

SECTION 2. That Chapter 102 entitled "Taxation," Article V entitled "Local Business Tax," of the Code of the City Miami Beach is hereby amended to create Section 102-386 to be entitled "Property Owner's Responsibilities regarding Transient Rental and Occupancy (Short Term) of Residential Property," as follows:

CHAPTER 102

TAXATION

* * *

Article V. Local Business Tax.

Sec. 102-386. Property Owner's Responsibilities regarding Legally Permissible Transient Rental and Occupancy (Short Term) of Residential Property.

Prior to receiving a Business Tax Receipt or advertising the property, a Property Owner must comply with the following provisions:

A. An owner of a residential property is prohibited from advertising the residential property, or any portion thereof, for its transient rental or occupancy, unless:

(1) The property owner submits an affidavit to the City, under penalty of perjury, for each residential property or unit (or any portion thereof), which states that the property owner:

a. Has confirmed that the City's Land Development Regulations, which are applicable to the residential property, authorize the property owner to engage in the transient rental or occupancy of the residential property or unit; and

b. Has obtained a business tax receipt that has been issued to the property owner for the purpose of engaging in the transient rental or occupancy of the residential property or unit, as authorized by the City's Land Development Regulations; and

c. Has registered the residential property with the City Finance Director, and obtained the appropriate resort tax registration certificate pursuant to Chapter 102, Article IV, Division 4 of this Code.

d. Has complied with those applicable requirements of the American Disabilities Act Regulations and design standards, as may be required for the residential property or unit, in conjunction with attaining compliance with the Florida Fire Prevention Code and the Florida Building Code.

e. Has obtained written authorization from the Condominium Association that expressly authorizes the property owner to engage in the transient rental or occupancy of the residential property or unit. The written authorization must be attached to, and incorporated within, the Affidavit submitted to the City of Miami Beach.

f. Has disclosed the Business Tax Receipt number for each residential property or unit in the advertisement, and that the Property Owner has fully complied with those provisions set forth within Section 102.386.

B. Notwithstanding the requirements of Subsection A., a property owner of a residential unit(s), which is located within an apartment-hotel or a condominium-hotel, must disclose within the affidavit that each prospective guest receives written notification that the unit(s) is/are not affiliated with the primary hotel operator at the property, and that the prospective guest is not entitled to those benefits and amenities that are offered by the primary hotel operator. The advertisement of the residential unit(s) by the property owner must include a disclaimer that the unit(s) is/are not affiliated with the primary hotel operation at the property, and are not entitled to those benefits and amenities that may be offered by the primary hotel operator.

C. 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~~ written warning;

- b. If the violation is the second violation within the preceding six months, a person or business shall receive a civil fine of ~~\$2,000.00~~ \$1,000.00;
 - 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 and the business tax receipt shall be revoked.
- (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 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 police officer. The failure of the named violator to appeal the decision of the police 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 C(1).

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 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 on the _____ day of _____, 2016.

PASSED and ADOPTED this _____ day of _____, 2016.

ATTEST:

Mayor Philip Levine

Rafael E. Granado, City Clerk

Underline denotes new language
(Sponsored by Commissioners Joy Malakoff and John Elizabeth Alemán and
Co-Sponsored by Vice-Mayor Michael Grieco)

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

City Attorney **AB** 11/1/16
Date