



MIAMI BEACH

PLANNING DEPARTMENT Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: July 28, 2009

FROM: Jorge G. Gomez, AICP
Planning Director

SUBJECT: File No. 1925 – Short term rental of apartment units or townhomes

BACKGROUND

Consideration of an ordinance regulating short term or seasonal rentals in the multifamily and other zoning districts in the City that prohibit hotel and transient uses was referred to the Land Use and Development Committee and the Planning Board by the City Commission on September 10, 2008, at the request of the City Manager and the City Attorney.

As described in the attached memo dated September 10, 2008, it had come to the City's attention that numerous multifamily building and apartment unit owners are engaged in short term rental of their units, including on a daily or weekly basis. Several of the City's multifamily zoning districts do not allow hotel uses, which uses constitute transient occupancy. Some Commercial, Residential Office and Townhouse districts also do not permit hotel uses. Therefore, hotel and transient uses are prohibited in these zoning districts. Such use can disrupt the residential character of these buildings. When discovered, the owners are cited by the City for violation of the applicable City Code provisions that prohibit such hotel or transient use.

On September 22, 2008, the Land Use and Development Committee further discussed the issue of short-term rentals in zoning districts which do not permit hotel use, and the history of violations given for unlicensed short term rentals of apartments in these districts. The hearing was lengthy, and much input from interested parties and stakeholders was given. The Administration recommended that the matter be referred to the Planning Board, with any policy direction deemed appropriate. The Committee voted 3-0 to send the matter to the Planning Board for review, with a recommendation to permit minimum one (1) week rentals, with proper licensing. The Administration was instructed to not pursue any violations regarding short term rentals unless they were the result of a complaint received by the City.

ANALYSIS

The City's Land Development Regulations ("LDRs") contain several multiple-family residential zoning districts, most all of which permit various types of apartment dwellings. Each of these different multifamily zoning districts may allow other main permitted uses and accessory uses, in addition to apartment uses, depending on the location and compatibility of each district. For example, within the highest intensity multifamily zoning districts, such as RM-3 and RPS- 4

along the beachfront, hotels are also allowed. In medium intensity districts such as RM-2 and RPS-3, hotels may also be allowed, but with additional restrictions on their accessory uses.

In the lowest intensity multifamily apartment districts, such as RM-1 and RPS-1 and 2, hotels are not permitted. These districts, characterized by low scale apartment buildings such as the Flamingo Park neighborhood, are designed as primarily residential, with no little or no commercial main or accessory uses. Therefore, there is a distinction in these areas, which do permit apartment buildings, but do not permit hotels.

In past years, the line between hotels and apartment uses has become blurred, as various forms of ownership and use have proliferated throughout the City's multifamily districts. It has become somewhat common for owners of beachfront condominium units to rent out their units on a short term basis, especially when the unit is a second home and not in use year-round. While the beachfront RM-3 zoning district does permit hotels and would permit short term rental if properly licensed, in many cases these rentals are simply a private transaction, without licensing, resort tax or fire inspections normally associated with hotel use.

These types of short term rental uses are also occurring in other multi-family zoning districts within Miami Beach, including those low-intensity districts which do not permit hotel uses as a main permitted use. In these districts, it is more problematic to permit short term apartment rental, as the use of these apartments on such a short term, transient basis appears to be similar if not identical to the definition of hotel in the City's LDR's, and as such, would not be permitted as a main permitted use where hotels were prohibited.

The LDR's define hotel uses as buildings occupied or intended to be occupied by transient residents, and a hotel unit as intended for rental to transients on a day-to-day, week-to-week, or month-to-month basis. The City Code treats residences leased in the City for less than six consecutive months and one day as transient occupancy, based in part on the resort tax requirements. Therefore, the City treats the rental of multifamily residential or townhome properties in districts that do not permit hotel uses for periods of less than six months and one day as a transient use and therefore prohibited under existing regulations.

Several violations have been issued for this short term rental activity. As stated above, the Land Use and Development Committee, after discussion, referred to the matter to the Planning Board, with the direction that an ordinance be reviewed that would permit short term rentals in the subject districts, with a minimum duration of one week. The originally proposed ordinance, drafted by the City Attorney's Office would permit such short term rentals, under certain specified conditions and restrictions deemed necessary to protect against adverse external effects of such uses.

PLANNING BOARD DISCUSSIONS

This proposal to permit short term rental of apartment units in districts which do not permit transient uses was discussed at length by the Planning Board at its March 24, 2009 and May 26th 2009 meetings. On May 26th, the Planning Board went over the operational aspects of the proposed ordinance in detail, and voted to adopt a draft containing all amendments and modifications addressing operational issues. A draft of that version adopted by the Board is attached. The Board then continued the matter, expressing the intention to devote that meeting to reviewing the geographical aspects of the ordinance, that is, which districts throughout the City may be appropriate or inappropriate for introducing short term rentals of apartments.

GEOGRAPHIC APPLICABILITY

The originally proposed ordinance would apply Citywide to properties within the RM-1, RM-PRD, RM-PRD-2, RPS-1 and RPS-2, CD-1, RO, RO-3 and TH districts, which currently do not permit hotel uses. However, the Planning Board had expressed the concern that the various different areas and neighborhoods which would be affected by this proposal throughout the City were of differing character, especially with respect to the variety of factors which could influence the appropriateness of introducing short term rentals and transient uses. Planning Department staff was asked to perform additional research regarding which neighborhoods were more or less suited to this proposal. The attached maps show the areas of the City which currently allow some type of transient use, the areas of the City which would be affected by this ordinance, and the percentage of parcels having homestead exemption within these areas.

The data on homestead exemptions clearly show that certain multifamily apartment areas where current zoning does not permit transient usage contain a high percentage of homesteaded properties (50 percent or more). Since these areas, such as the north half of Belle Isle, the southeast portion of Normandy Isle, and Parkview Island, contain such a high level of homesteaded properties, which presupposes permanent occupancies, the introduction of short term rental into these areas would appear to be inappropriate. By contrast, most of the other multifamily zoning districts which would be affected by this ordinance contain a lesser percentage of homesteaded properties; for example, the RM-1 district in the Flamingo Park Historic District has about 35 percent of its residential units with the homestead exemption. A lower level of homesteaded properties could be taken as a proxy to indicate a greater likelihood of transient residential usage, and may justify the introduction of a short term rental program in those areas. Several of the smaller pockets of multifamily apartment zoning are completely surrounded by single family residential area, and should likewise be considered inappropriate for short term rental use.

The maps showing zoning districts which currently allow some form of transient usage demonstrate that many of the areas which could be part of a short term rental program proposal already allow some type of transient occupancy. The RPS-1 and RPS-2 districts south of Fifth Street already allow Apartment Hotels, and the RM-1 District permits Suites Hotels in the West Avenue Bay Front Overlay District (West Avenue and Bay Road from 11th Street to 16th Street) and bed and breakfast inns in locally designated historic districts such as Flamingo Park and Collins Waterfront (the area between Pinetree Drive and Lake Pancoast, south of 25th Street). Since these areas already permit some form of transient occupancy, the introduction of short term rentals in these areas may create less negative impacts than in areas with no previous transient occupancies permitted.

The neighborhoods described above which are part of this proposed ordinance and also permit some form of transient occupancy already are depicted in the final map. The RM-1 districts in the Flamingo Park and Collins Waterfront Historic Districts, and the RPS-1 and RPS-2 districts in the Ocean Beach Historic District south of Fifth Street, all permit some type of transient occupancy today, and are located close to large concentrations of existing hotels and tourism activities. Staff believes that these areas share common characteristics, as their proximity to existing tourist and transient uses could signal the appropriateness of these areas for the proposed short term rental program. A case could be made that these districts are most closely related to existing transient and tourist areas, and so could be most appropriate for the introduction of a short term rental program such as that envisaged by the proposed ordinance.

Limiting the proposed short term rental program to zoning districts within the City's designated local historic districts could also become a mechanism to further encourage the adaptive reuse and rehabilitation of existing contributing structures in these areas. The rationale for permitting bed and breakfast inns in these areas was to provide incentives for the adaptive reuse of buildings in those areas, and a similar rationale could be used to bolster the rationale for the introduction of short term rentals within these districts.

Staff has prepared a second draft ordinance version (see attached), limiting the proposed short term rental program to zoning districts within the City's designated local historic districts (The RM-1 and TH districts in the Flamingo Park and Collins Waterfront Historic Districts, and the RPS-1 and RPS-2 districts in the Ocean Beach Historic District south of Fifth Street).

Also attached is a resolution adopted by the Flamingo Park Neighborhood Association, expressing concern over the proposed ordinance, and recommending that the City retain the existing six-month minimum rental length for apartments in districts which do not allow transient hotel occupancy. The FPNA resolution states that they would not be opposed to grandfathering in existing short term rentals, and recommends the inclusion of Apartment Hotels as a permitted use in the RM-1 district. Finally, it states that if a short term rental program is adopted, then the manager/supervisor should be required to be on-site 24 hours, or within one block of the property.

OPERATIONAL REGULATIONS

As per the latest draft of the ordinance as discussed by the Planning Board in May, short term rental of apartment (including condominiums) and townhome residential units would be permitted, according to the following rules:

Time period. All short term rentals must be pursuant to a binding written agreement, license or lease for seven (7) or more consecutive days. No unit may be rented more frequently than on a weekly basis.

Family or housekeeping unit. All rentals must be to one family or housekeeping unit (as defined under *family* in section 114-1).

Contact person. All rentals must be supervised by the owner, or a local and licensed real estate broker or agent or an authorized agent licensed by the City, who must be available for contact on a twenty-four hour basis, seven days a week, and who must have a principal office or residence located within Miami Dade or Broward County. The name and phone number of the emergency contact person must be permanently posted on the exterior of the premises or structure. **Note: Planning Department staff remains of the opinion that that the contact person designated by the ordinance should be within the city limits of the City of Miami Beach. The larger Dade/Broward metropolitan region may be too large to ensure adequate coverage and attention to emergency matters related to these uses. Also, by limiting the contact person to Miami Beach, compliance can be more effectively tracked through the use of City occupational license information.**

Entire unit. Only entire apartment and townhome units, as defined in section 114-1, legally created pursuant to applicable law, may be rented to a family or housekeeping unit, not individual rooms or separate portions of apartments or townhome units.

Rules and Procedures. The city manager or designee will adopt administrative rules and procedures to assist in the uniform enforcement of this ordinance.

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, except for the contact information required to be posted by the ordinance.

Approvals required. Owners will need to obtain a business tax receipt, certificate of use, and certificate of occupancy (required to prove compliance with applicable codes), and provide the contact information to City for the contact person in charge. Approvals will not be issued or renewed if more than two violations at the unit of the noise ordinance, commercial use ordinance, or this ordinance were adjudicated within the preceding 18 months.

Resort taxes. Owners will be subject to resort taxes for rentals.

Association Rules. Where a condominium or other property owners association has been created that includes the rental property, a letter from the association 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 provided herein are not prohibited by the association, must be submitted to the City as part of the application for short term rental approval.

Existing single family structures in the above referenced multifamily zoning districts will be able to engage in rentals in accordance with these regulations, following receipt of proper approvals. Only entire single family structures may be rented under this ordinance, unless in conformity with the requirements of section 142-1401 as an historic bed and breakfast.

Note that this program shall not apply to legal nonconforming apartment buildings within single family zoning districts, which will continue to be governed by the single family zoning district section of the Code. The ordinance also contains the restriction that no variances may be granted to any section of these provisions for short term rentals.

Another important aspect of any consideration of short term rentals in apartment districts is the requirements such rentals will face with regard to fire and building codes. According to an analysis prepared by the Fire Marshall, (see attached), there are differing occupancy categories based upon the number of units to be used for transient occupancy. A building with 16 or fewer units which is to be used for transient rentals is classified as "Lodging", while one with 17 or more units is classified as "Hotel" occupancy. Conversion of apartment units to either lodging or hotel units both require an application for a change of occupancy.

In either case, conversion of apartment units to transient rentals will require building services (utilities, hvac, elevators) to be brought up to current code. Smoke alarms and fire Alarm systems must be provided, stairways must be enclosed, means of primary and secondary escape must be provided, and all doors and locks must also be code compliant. For buildings less than 17 units, a fire sprinkler system must be provided unless the building meets a specific exception (where every sleeping room has door opening directly to the outside).

For building over 16 units, or "hotel" occupancy, a fire sprinkler system must be provided; there is no exception to this rule. This occupancy classification also requires a specific arrangement

of means of egress (dead ends, common path of travel, etc.), and the number of exits must be adequate and comply with code. Stairs must have proper rated enclosure, and the discharge of exits must be adequate and comply with code. The means of egress must be illuminated, and emergency lighting and exit signage must be provided. In short, the steps necessary to comply with the fire and building codes may require a significant degree of effort for the average apartment owner.

Regarding the fines associated with violations of this ordinance, note that the originally proposed fine schedule was taken from the previously approved commercial "party house" ordinance, and reflected the high profitability that these party house uses were known to have. Since violators of that ordinance were known to be able to command several thousand dollars per day for use of the single family homes for commercial uses, the fines were deliberately set to a high level, in order to provide a deterrent factor. However, those involved with short term rentals of apartments have stated that their profitability is much lower, and that they could reasonably expect to garner in the range of \$800 to \$1200 per weeks rental. As the amount of money being charged for such rentals is lower than was typical for commercial party houses, the Planning Board re-analyzed the proposed fine schedule, and lowered it to a level more commensurate with the actual profitability of these rentals.

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.

Partially Consistent – The Comprehensive Plan lists each Future Land Use District, which corresponds to the zoning districts within the LDR's. The list of permitted uses is generally the same in both, so if no change to the list of main permitted uses is envisaged in the LDR's, then the proposed ordinance is consistent with the Comprehensive Plan. The proposed ordinance does not appear in conflict with any neighborhood or redevelopment plans.

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

Consistent – The proposed ordinance would not create an isolated district, but would encompass all those multifamily zoning districts not currently permitting hotel usage.

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

Consistent – The proposed ordinance does not affect the physical scale of any new or existing development.

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

Partially Consistent – The requirements for city services would be expected to be higher for transient hotel uses than those associated with normal multifamily apartment

usages. Therefore, the proposed ordinance has the potential to result in increased demands for public services within areas not currently permitting transient usages.

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

Consistent – The zoning districts affected by the proposed ordinance are all those multifamily districts which do not currently permit hotels.

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

Consistent – It is commonly known that short term rentals of the type envisaged by the proposed ordinance are widely available through certain channels, and in somewhat constant demand. Adoption of a short-term rental ordinance could be seen as adapting the City's LDR's to currently existing practice.

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

Partially Consistent – The proposed ordinance may lead to increases in traffic and parking demand within areas where this previously did not exist. Also, the introduction of short term rentals has the potential to diminish the sense of privacy and ambience associated with a purely residential community, if not carefully controlled through regulations and enforcement.

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.

Partially Consistent – The traffic generation figures for transient hotel uses are generally higher per unit than those associated with normal multifamily apartment usages. Therefore, the proposed ordinance has the potential to result in slightly increased traffic flows within areas not currently permitting transient usages.

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

Consistent – No changes to the physical development in the City would be caused by the proposed ordinance.

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

Partially Consistent – The proposed ordinance may have both positive and negative effects on the property values of the adjacent area. Increases in value may accrue if the semi-commercial nature of this rental use allows owners to recoup a portion of their investment through short term rentals. However, if the introduction of short term rentals in areas where this previously did not exist results in a diminution of the sense of privacy and ambience associated with a purely residential community, then reductions in adjacent property values could result.

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 ordinance should not affect future development or improvements to adjacent properties.

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

Partially Consistent – The subject zoning districts currently permit apartment rentals of six months and one day or more. While there is no reason why existing property owners cannot use their properties either for their own residences, or for rental apartments under today's restrictions, as stated above, it is fairly common knowledge that short term rentals of the type envisaged by the proposed ordinance are widely available through certain channels. Adoption of a short-term rental ordinance could be seen as adapting the City's LDR's to currently existing practice.

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

Partially Inconsistent – Several other zoning districts throughout Miami Beach currently permit both apartment usage and hotel use.

STAFF RECOMMENDATION

Planning Department staff recommends that the Planning Board recommends to the City Commission approval of the "Planning Department staff version as of July 27, 2009".

With these limitations, Planning Department staff believes that the ordinance would achieve the goal of permitting short term rentals in areas where this would be compatible with the surrounding neighborhoods, while also protecting areas which are primarily residential and which would not be compatible with short term transient rentals.

JGG/RGL

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Planning Board version as of May 26, 2009

“SHORT TERM RENTAL OF APARTMENT UNITS OR TOWNHOMES”

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142 OF THE CITY CODE, “ZONING DISTRICTS AND REGULATIONS,” ARTICLE IV, “SUPPLEMENTARY DISTRICT REGULATIONS,” DIVISION 3, “SUPPLEMENTARY USE REGULATIONS,” BY CREATING NEW ORDINANCE SECTION 142-1111, “SHORT TERM RENTAL OF APARTMENT UNITS OR TOWNHOMES,” PROVIDING FOR REPEALER, NONSEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the Land Development Regulations (“LDRs”) restrict multifamily residential properties to residential and compatible uses; and

WHEREAS, the LDRs are designed to protect and preserve the identity, image, environmental quality, privacy, attractive pedestrian streetscapes, and human scale and character of the City’s residential neighborhoods and buildings and to encourage and promote construction that is compatible with the established neighborhood context; and

WHEREAS, the RM-1, RM-PRD, RM-PRD-2, RPS-1 and RPS-2, CD-1, RO, RO-3, and TH zoning districts do not permit hotel uses, except for a specified section of the RM-1 district in North Beach, and apartment hotels in the RPS-1 and RPS-2 districts; and

WHEREAS, the land development regulations define hotel uses as buildings occupied or intended to be occupied by transient residents; and

WHEREAS, the City Code treats residences leased in the City for less than six consecutive months and one day as transient occupancy; and

WHEREAS, the rental of multifamily residential or townhome properties in districts that do not permit hotel uses for periods of less than six months and one day is a transient use and therefore prohibited under existing regulations; and

WHEREAS, the City has determined that there is a potential for harm if transient rentals are permitted without regulations protecting against adverse external effects of such use or prohibited in certain instances; and

WHEREAS, multifamily or townhome unit owners' sense of community and privacy would be compromised by commercial and transient use of units in multifamily buildings and neighborhoods; and

WHEREAS, multifamily or townhome unit owners have reasonable expectations of a community of permanent neighbors and owners and the privacy such a community entails; and

WHEREAS, the privacy and ambience of such multifamily or townhome residential buildings and areas are materially undermined by transient rentals; and

WHEREAS, the values associated with multifamily or townhome residential areas can only be preserved by very limited and controlled commercial and transient use of residences, if at all; and

WHEREAS, the Planning Department Staff Report contains further history, research and concerns about this issue, which report is adopted as part of the legislative history of this ordinance; and

WHEREAS, while residents are entitled to enjoy the use of their multifamily units consistent with applicable regulations in apartment or townhome residential districts, it is deemed that such uses may exist in apartment or townhome districts if subject to regulation that would protect the enjoyment, character and value of apartment or townhome residential neighborhoods, buildings and units, and accordingly, the provisions herein regarding Short Term Rental of Apartment Units or Townhomes are hereby adopted.

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

Section 1. That City Code Chapter 142, "Zoning Districts And Regulations," Article IV, "Supplementary District Regulations," Division 3, "Supplementary Use Regulations," is hereby amended by creating new Section 142-1111, "Short Term Rental Of Multifamily Units," as follows:

Sec. 142-1111. Short Term Rental Of Apartment Units or Townhomes.

(a) Intent and Purpose:

The Land Development Regulations restrict apartment and townhome residential properties to residential and compatible uses. 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, unless expressly provided for in these land development regulations (such as for a portion of the RM-1 district, and for apartment hotels in

the RPS-1 and RPS-2 districts) are not considered as a permitted use in such districts, unless conducted in accordance with this section.

(b) Regulations:

(1) For properties within the RM-1, RM-PRD, RM-PRD-2, RPS-1 and RPS-2, CD-1, RO, RO-3 and TH districts, unless otherwise expressly provided for in these land development regulations, short term rental of apartment (including condominium) and townhome residential units shall be permitted, provided that the following mandatory requirements are followed:

a. **Time period.** All short term rentals under this section must be pursuant to a binding written agreement, license or lease for seven (7) or more consecutive days. Each such document shall contain, at a minimum: the beginning date and the ending date of the lease term; and each lessee's name, permanent address, land line telephone number, cell phone number, fax number, and e-mail address, as applicable. No unit may be rented more frequently than on a weekly basis.

b. **Family or housekeeping unit.** All rentals must be to one family or housekeeping unit (as defined under *family* in section 114-1). This section does not authorize the establishment of rooming houses as defined in section 114-1 in these districts.

c. **Contact person.** All rentals must be supervised by the owner, or a local and licensed real estate broker or agent or an authorized agent licensed by the City, who must be available for contact on a twenty-four hour basis, seven days a week, and who must have a principal office or residence located within Miami Dade or Broward County, at which each agreement, license, or lease must be kept available throughout its lease term and for a period of one year thereafter, so that each such document or, solely at the option of the authorized enforcement personnel specified in Section 142-1111(c)(3), the information in each such document, can be readily and promptly furnished, on demand, to enforcement personnel. The name, land line and cell phone number of the emergency contact person shall be permanently posted on the exterior of the premises or structure, in a manner subject to the review and approval of the city manager or designee.

d. **Entire unit.** Only entire apartment and townhome units, as defined in section 114-1, legally created pursuant to applicable law, may be rented to a family or housekeeping unit under this section, not individual rooms or separate portions of apartments or townhome units.

e. **Rules and Procedures.** The city manager or designee may adopt administrative rules and procedures to assist in the uniform enforcement of this ordinance.

f. **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.

g. **Approvals required.** Owners must obtain a business tax receipt, certificate of use, and certificate of occupancy (required to prove compliance with applicable codes), and provide contact information (name, permanent office or residential address, land line telephone number, cell phone number, fax number, and e-mail address) to the city manager or designee for the person identified in subsection c above on an application form provided for that purpose. The application shall be accompanied by the letter described in subsection i below and by copies of the business tax receipt, certificate of use, and certificate of occupancy. Approvals shall be issued for a one-year period, but shall not be issued or renewed if more than two violations at the unit, or at the building if the owner owns multiple units, of the noise ordinance, commercial use ordinance, or this ordinance issued to the short term rental owner or operator were adjudicated either by failure to appeal from a Notice of Violation or a Special Master's determination of a violation, within the 18 months preceding the date of filing of the application. The City may for cause revoke an approval before its expiration date, in which event the owner may not reapply for a period of one year following the date of revocation; provided, however, that, before any such revocation, the City shall furnish to the owner both notice and the opportunity to present information as to why the approval should not be revoked.

h. **Resort taxes.** Owners are subject to resort taxes for rentals under this section.

i. **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 sixty 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 provided herein are not prohibited by the association, shall be submitted to the City as part of the application.

j. **Apartment buildings in single family districts.** Apartment buildings in single family zoning districts shall follow the regulations in such single family zoning districts.

k. **Single family structures in a zoning district listed in this section.** Single family structures in a zoning district listed in this section may engage in rentals in accordance with this section, following receipt of proper approvals. Only entire single family structures may be rented under this ordinance, unless in conformity with the requirements of section 142-1401 as an historic bed and breakfast.

l. **Variances.** No variances may be granted from the requirements of this section.

(c) Enforcement:

(1) Violations of this section shall be subject to the following fines. The special master may not waive or reduce fines set by this ordinance.

- a. If the violation is the first violation: \$500.00;
- b. If the violation is the second violation within the preceding 18 months: \$1,500.00;
- c. If the violation is the third violation within the preceding 18 months: \$5,000.00;
- d. If the violation is the fourth or greater violation within the preceding 18 months: \$7,500.00.

Fines for repeat violations shall increase regardless of location.

(2) In addition to or in lieu of the foregoing, the City may seek an injunction or impose a prohibition against, or revoke approvals issued for, rentals permitted under this section.

(3) Any city police officer or code compliance officer may issue notices for violations of this ordinance, with alternative enforcement as provided in section 1-14 and Chapter 30 of this Code. Violations shall be issued to the owner, renter, and/or to any realtor, real estate agent, real estate broker, or any other individual or entity that facilitates the prohibited use. 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 mail on the owner at its mailing address in the property appraiser's records, or on the owner's registered agent.

Section 2. Repealer.

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

Section 3. Codification.

It is the intention of the City Commission, and it is hereby ordained, that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, as amended; that the sections of this Ordinance may be re-numbered or re-lettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

Section 4. Nonseverability.

This ordinance is not severable, and if any provision hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the ordinance shall be returned to the City Commission for reconsideration or clarification.

Section 5. Effective Date.

This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this _____ day of _____ 2009.

ATTEST:

MAYOR

CITY CLERK

First Reading:
Second Reading:
Verified By:

Jorge G. Gomez, AICP
Planning Director

APPROVED AS TO FORM
AND LANGUAGE, AND
FOR EXECUTION

City Attorney

Date

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Planning Department staff version as of July 27, 2009

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WHEREAS, the land development regulations define hotel uses as buildings occupied or intended to be occupied by transient residents; and

WHEREAS, the City Code treats residences leased in the City for less than six consecutive months and one day as transient occupancy; and

WHEREAS, the rental of multifamily residential or townhome properties in districts that do not permit hotel uses for periods of less than six months and one day is a transient use and therefore prohibited under existing regulations; and

WHEREAS, the City has determined that there is a potential for harm if transient rentals are permitted without regulations protecting against adverse external effects of such use or prohibited in certain instances; and

WHEREAS, multifamily or townhome unit owners' sense of community and privacy would be compromised by commercial and transient use of units in multifamily buildings and neighborhoods; and

WHEREAS, multifamily or townhome unit owners have reasonable expectations of a community of permanent neighbors and owners and the privacy such a community entails; and

WHEREAS, the privacy and ambience of such multifamily or townhome residential buildings and areas are materially undermined by transient rentals; and

WHEREAS, the values associated with multifamily or townhome residential areas can only be preserved by very limited and controlled commercial and transient use of residences, if at all; and

WHEREAS, the Planning Department Staff Report contains further history, research and concerns about this issue, which report is adopted as part of the legislative history of this ordinance; and

WHEREAS, while residents are entitled to enjoy the use of their multifamily units consistent with applicable regulations in apartment or townhome residential districts, it is deemed that such uses may exist in apartment or townhome districts if subject to regulation that would protect the enjoyment, character and value of apartment or townhome residential neighborhoods, buildings and units, and accordingly, the provisions herein regarding Short Term Rental of Apartment Units or Townhomes are hereby adopted.

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

Section 1. That City Code Chapter 142, "Zoning Districts And Regulations," Article IV, "Supplementary District Regulations," Division 3, "Supplementary Use Regulations," is hereby amended by creating new Section 142-1111, "Short Term Rental Of Multifamily Units," as follows:

Sec. 142-1111. Short Term Rental Of Apartment Units or Townhomes.

(a) Intent and Purpose:

The Land Development Regulations restrict apartment and townhome residential properties to residential and compatible uses. 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, unless expressly provided for in these land development regulations (such as for a portion of the RM-1 district, and for apartment hotels in

the RPS-1 and RPS-2 districts) are not considered as a permitted use in such districts, unless conducted in accordance with this section.

(b) Regulations:

(1) For properties within the RM-1, RM-PRD, RM-PRD-2, RPS-1 and RPS-2, CD-1, RO, RO-3 and TH districts **located in the Flamingo Park and Collins Waterfront Historic Districts**, unless otherwise expressly provided for in these land development regulations, short term rental of apartment (including condominium) and townhome residential units shall be permitted, provided that the following mandatory requirements are followed:

a. **Time period.** All short term rentals under this section must be pursuant to a binding written agreement, license or lease for seven (7) or more consecutive days. Each such document shall contain, at a minimum: the beginning date and the ending date of the lease term; and each lessee's name, permanent address, land line telephone number, cell phone number, fax number, and e-mail address, as applicable. No unit may be rented more frequently than on a weekly basis.

b. **Family or housekeeping unit.** All rentals must be to one family or housekeeping unit (as defined under *family* in section 114-1). This section does not authorize the establishment of rooming houses as defined in section 114-1 in these districts.

c. **Contact person.** All rentals must be supervised by the owner, or a local and licensed real estate broker or agent or an authorized agent licensed by the City, who must be available for contact on a twenty-four hour basis, seven days a week, and who must have a principal office or residence located within **the City of Miami Beach** —~~Miami Dade or Broward County~~, at which each agreement, license, or lease must be kept available throughout its lease term and for a period of one year thereafter, so that each such document or, solely at the option of the authorized enforcement personnel specified in Section 142-1111(c)(3), the information in each such document, can be readily and promptly furnished, on demand, to enforcement personnel. The name, land line and cell phone number of the emergency contact person shall be permanently posted on the exterior of the premises or structure, in a manner subject to the review and approval of the city manager or designee.

d. **Entire unit.** Only entire apartment and townhome units, as defined in section 114-1, legally created pursuant to applicable law, may be rented to a family or housekeeping unit under this section, not individual rooms or separate portions of apartments or townhome units.

e. **Rules and Procedures.** The city manager or designee may adopt administrative rules and procedures to assist in the uniform enforcement of this ordinance.

f. **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.

g. **Approvals required.** Owners must obtain a business tax receipt, certificate of use, and certificate of occupancy (required to prove compliance with applicable codes), and provide contact information (name, permanent office or residential address, land line telephone number, cell phone number, fax number, and e-mail address) to the city manager or designee for the person identified in subsection c above on an application form provided for that purpose. The application shall be accompanied by the letter described in subsection i below and by copies of the business tax receipt, certificate of use, and certificate of occupancy. Approvals shall be issued for a one-year period, but shall not be issued or renewed if more than two violations at the unit, or at the building if the owner owns multiple units, of the noise ordinance, commercial use ordinance, or this ordinance issued to the short term rental owner or operator were adjudicated either by failure to appeal from a Notice of Violation or a Special Master's determination of a violation, within the 18 months preceding the date of filing of the application. The City may for cause revoke an approval before its expiration date, in which event the owner may not reapply for a period of one year following the date of revocation; provided, however, that, before any such revocation, the City shall furnish to the owner both notice and the opportunity to present information as to why the approval should not be revoked.

h. **Resort taxes.** Owners are subject to resort taxes for rentals under this section.

i. **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 sixty 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 provided herein are not prohibited by the association, shall be submitted to the City as part of the application.

j. **Apartment buildings in single family districts.** Apartment buildings in single family zoning districts shall follow the regulations in such single family zoning districts.

k. **Single family structures in a zoning district listed in this section.** Single family structures in a zoning district listed in this section may engage in rentals in accordance with this section, following receipt of proper approvals. Only entire single family structures may be rented under this ordinance, unless in conformity with the requirements of section 142-1401 as an historic bed and breakfast.

l. **Variances.** No variances may be granted from the requirements of this section.

(c) Enforcement:

(1) Violations of this section shall be subject to the following fines. The special master may not waive or reduce fines set by this ordinance.

- a. If the violation is the first violation: \$500.00;
- b. If the violation is the second violation within the preceding 18 months: \$1,500.00;
- c. If the violation is the third violation within the preceding 18 months: \$5,000.00;
- d. If the violation is the fourth or greater violation within the preceding 18 months: \$7,500.00.

Fines for repeat violations shall increase regardless of location.

(2) In addition to or in lieu of the foregoing, the City may seek an injunction or impose a prohibition against, or revoke approvals issued for, rentals permitted under this section.

(3) Any city police officer or code compliance officer may issue notices for violations of this ordinance, with alternative enforcement as provided in section 1-14 and Chapter 30 of this Code. Violations shall be issued to the owner, renter, and/or to any realtor, real estate agent, real estate broker, or any other individual or entity that facilitates the prohibited use. 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 mail on the owner at its mailing address in the property appraiser's records, or on the owner's registered agent.

Section 2. Repealer.

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

Section 3. Codification.

It is the intention of the City Commission, and it is hereby ordained, that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, as amended; that the sections of this Ordinance may be re-

numbered or re-lettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

Section 4. Nonseverability.

This ordinance is not severable, and if any provision hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the ordinance shall be returned to the City Commission for reconsideration or clarification.

Section 5. Effective Date.

This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this _____ day of _____ 2009.

ATTEST:

MAYOR

CITY CLERK

First Reading:

Second Reading:

Verified By:

Jorge G. Gomez, AICP
Planning Director

APPROVED AS TO FORM
AND LANGUAGE, AND
FOR EXECUTION

City Attorney

Date

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MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager
Jose Smith, City Attorney

DATE: September 10, 2008

SUBJECT: **A REQUEST FOR REFERRAL TO THE LAND USE AND DEVELOPMENT COMMITTEE AND THE PLANNING BOARD FOR CONSIDERATION OF AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS BY AMENDING OR ADDING NEW REGULATIONS CONCERNING SHORT TERM RENTAL OF MULTIFAMILY UNITS IN ZONING DISTRICTS THAT DO NOT PERMIT HOTELS OR TRANSIENT OCCUPANCIES.**

ADMINISTRATION AND CITY ATTORNEY RECOMMENDATION

Approve the requested referral.

ANALYSIS

The Land Development Regulations restrict multi-family residential properties to residential and compatible uses. In the RM-1, RM-PRD, RM-PRD-2, RPS-1 and RPS-2 multifamily zoning districts, regulations do not allow hotel, apartment hotel, or suites hotel uses, which uses constitute transient occupancy. Further, hotel uses are not permitted in the CD-1, RO, RO-2, RO-3, and TH districts. Therefore, hotel and transient uses are prohibited in these zoning districts.

It has come to the City's attention that numerous multifamily building and apartment unit owners are engaged in short term rental of their units, including on a daily or weekly basis. Such use disrupts the residential character of these buildings. When discovered, the owners are cited for violation of the applicable City Code provisions that prohibit such hotel or transient use.

It has become apparent that it is appropriate for the City to codify a policy on short term rental of multifamily buildings and apartment units. This referral is intended to initiate the process by which such policy determination and codification may occur. Through this referral process, it can be determined which districts' regulations should be modified, and how.

CONCLUSION

The Administration and City Attorney recommend the referral to the Land Use and Development Committee and the Planning Board for consideration of an ordinance regulating short term or seasonal rentals in the multifamily and other zoning districts in the City that prohibit hotel and transient uses, as set forth above.

JMG/JS/TJ/JGG/GMH

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Agenda Item C4D
Date 9-10-08