



City of North Miami Beach
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MEMORANDUM

 [Print](#)

TO: Mayor and City Commission
FROM: Ana M. Garcia, City Manager, ICMA-CM
VIA: Richard Lorber, AICP, Community Development Director
DATE: Tuesday, December 19, 2017

RE: Ordinance No. 2017-14 Short Term Rental Amendments Ordinance(First Reading) (Richard Lorber, AICP, Community Development Director)

BACKGROUND ANALYSIS: This proposed text amendment to Section 24-90.1 of the North Miami Beach City Code would add a registration requirement for Short-Term Rentals in Residential Zoning Districts, and add a rebuttable presumption for advertising and advertisement evidence for Short-Term Rentals. It would create enforcement mechanisms and a fine schedule for violations.

RECOMMENDATION: Community Development Department staff recommends approval of the subject amending ordinance as drafted.

FISCAL/BUDGETARY IMPACT: Not applicable.

ATTACHMENTS:

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|--|
| <input type="checkbox"/> Staff Report |
| <input type="checkbox"/> Memo re-Ordinance 2017-14 |
| <input type="checkbox"/> Ordinance 2017-14 |



City of North Miami Beach, Florida

Community Development Department

CITY COMMISSION STAFF REPORT

TO: Mayor and City Commission

FROM: Ana M. Garcia, City Manager, ICMA-CM

VIA: Richard Lorber, AICP, Community Development Director

DATE: December 19, 2017

RE: Ordinance: Zoning Text Amendment – Short Term Rental Regulations

Request:

The applicant, City of North Miami Beach, proposes a text amendment to Section 24-90.1 of the North Miami Beach City Code, in order to add a registration requirement, a rebuttable presumption for advertising and advertisement evidence for Short-Term Rentals, and to adopt enforcement mechanisms and a fine schedule for violations.

Background:

Section 24-90.1 of the City Code regulates Short-Term Rentals in Residential Zoning Districts, and prohibits single-family dwelling units, including town houses, from being rented or leased to another person for a period of three (3) months or less, more than three (3) times in a twelve-month period. This provision was adopted by the City in 2009, because the City found that single-family residences used continually on a transient basis tend to create excessive numbers of guests, vehicles and noise, and cause inappropriate adverse impacts on the surrounding residences and residential neighborhood.

Since the adoption of the restriction in 2009, a small number of property owners of single-family residences continue to unlawfully engage in the transient rental and occupancy in violation of the City of North Miami Beach City Code, which is creating excessive number of guests, vehicles and noise, and causing inappropriate adverse impacts on the surrounding residences and residential neighborhood.

Additionally, at the time of adoption in 2009, a small number of properties were “grandfathered-in” based on previous usage, and were allowed to obtain Business Tax Receipts (BTR’s) for those individual properties (See attached “List of Grandfathered-in Residential Short Term Rental Resort Dwellings”). There are currently five (5) properties with BTR’s for this use, which are allowed to do short term rentals of no less than seven (7) days minimum, 52 weeks per year.

There have been complaints about these properties from nearby neighbors, and this proposed ordinance addresses those issues as well.

Planning and Zoning Department Analysis:

Short-term rentals of single family homes is a controversial subject, and concern is widespread in many areas of Florida and the nation that these uses can have detrimental effects on neighborhoods. 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 took steps in 2009 to limit this activity within the City.

As mentioned above, there have been repeated instances of violations of this provision, and enforcement of the regulations have proven difficult. In order for a violation to be issued, the illegal rental activity must be caught firsthand. That is not a common scenario, and the City needs a better way to enforce its regulation than simply reacting to complaints. The staff resources needed to catch violations of this regulation in the act are simply inadequate.

Registration

The Community Development Department believes that the best way to adequately regulate the short term rental of residential properties is through a City requirement for registering short term rental properties. This is done in most other jurisdictions, and is a way for the City to keep track of which properties are engaged in short-term rentals, and how many times per year each properties is offered for rental.

In order to permit short-term rentals of less than three months, the property owner must first apply for registration for the subject property. The ordinance provides that the City Manager or designee may adopt administrative rules and procedures including application and permit fees. If adopted, the Community Development Department would develop a simple, online method of registering short-term rental properties, with a fee set at a moderate price that captures the staff time involved with administering this program.

Once the registration form was submitted, a registration certificate would be approved by the Department, and the property included in the database of registered properties. Owners would then be required to submit a copy of each short term rental lease to the City. In this way, the City will track the number of times each year (rolling twelve month period) the property is offered for rental. Once the number of rentals permitted each year have been completed, the property may not rent again that year.

Staff has found that enforcement of a provision such as this is made easier by using the online websites for vacation rentals, which tend to also list the number of past rentals. One company, AirBnB, indicates that upon notification of the City's regulations, they would work with the City to remove ads that are in violation of this policy. Best practices are to have registration requirements in place to enforce the City regulations uniformly, and encourage compliance.

Other requirements being proposed involve having such rentals supervised by a local owner, manager, or licensed broker, 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 Miami-Dade or Broward County.

Advertising

The proposed ordinance adds Subsection E, which relates to advertising of short-term rentals. This provision defines advertisements for short-term rentals (internet sites, advertisements, etc.) and creates a “rebuttable presumption” that the advertising of a property for short-term rental to be used in a manner that would violate this Section can be used as evidence in any enforcement action.

Much of this language has been taken from an identical ordinance passed a few years ago by the City of Miami Beach. It states that advertising on the internet of an illegal short-term rental can be used as evidence in a special magistrate hearing, as proof of illegal short-term rental activity. It creates a “rebuttable presumption” that the property is being used in the manner in which it is advertised.

However, sufficient protection is afforded to the property owner, in that the ordinance provides that if cited for a violation of Subsection 24-90.1, they can submit an affidavit, under penalty of perjury, explaining that notwithstanding the advertisement the property was not used as an illegal short-term rental. Such affidavit shall void the rebuttable presumption against the owner.

Enforcement and Fines

The City Attorney’s Office has developed the following fine schedule to be applied to properties in violation under this ordinance.

- (1) \$500.00 per violation for the first violation;
- (2) \$1,000.00 per violation for a repeat violation within the preceding 12 months;
- (3) A violation occurring after one calendar year of a prior violation will revert to the \$500.00 penalty.

A violation of Subsection 24-90.1 in conjunction with any other Code violation, the following enhanced penalties shall apply:

- (1) \$1,000.00 per violation for the first violation;
- (2) \$5,000.00 per violation for a repeat violation within the preceding 12 months, and automatic suspension for 1 year of the business tax receipt or the short-term rental certificate of registration.

Additional language authorizes the City to go to court to seek an injunction to enforce compliance, and a requirement to record a certified copy of any violations. This provision also directs City staff to notify the Miami-Dade Property Appraiser and the Miami-Dade Tax Collector

of the violation and that the single-family residential property was used for transient rental or occupancy.

Summary

This ordinance will assist the City's Code Compliance Division in regulating illegal short term rentals and ensuring that short term rentals comply with the City's rules and regulations.

Community Development Department Recommendation:

Community Development Department staff recommends approval of the subject amending ordinance as drafted.

ATTACHMENT

List of Grandfathered-in Residential Short Term Rental “Resort Dwellings”

1	3180 NE 165 STREET	3180 NE 165 STREET LLC ERIC HARARI
2	16466 NE 31 AVENUE	GUY TENENBAUM
3	16469 NE 30 AVENUE	GUY TENENBAUM
4	16451 NE 34 AVENUE	T & T FLORIDA INVESTMENTS CORP. PRES: GUY TENENBAUM
5	16481 NE 31 AVENUE	T & T FLORIDA INVESTMENTS CORP. PRES: GUY TENENBAUM

TOTAL NUMBER OF BUSINESSES: 5





City of North Miami Beach Interoffice Memorandum

CITY ATTORNEY'S OFFICE
Phone: (305) 948-2939
Fax: (305) 787-6004

TO: Jose Smith, City Attorney

FROM: Geovanni J. Denis, Assistant City Attorney

DATE: August 3, 2017

RE: Proposed Amendments to Short-Term Rental Ordinance

I. No Preemption

In Florida, a municipality is given broad authority to enact ordinances under its municipal home-rule powers. Section 166.021 of Florida's Municipal Home Rule Powers Act states that, as provided in s. 2(b), Art. VIII of the State Constitution, municipalities may exercise any power for municipal purposes, except when expressly prohibited by law. The legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except any subject expressly preempted to state or county government by the constitution or by general law. That exception is to be so construed as to secure for municipalities the broad exercise of home-rule powers granted by the constitution. Florida courts have recognized that the government through the exercise of its police power may impose restrictions upon the use of property in the interests of the public health, morals, safety and public welfare. *City of Miami Beach v. Ocean & Inland Co.*, 3 So.2d 364, 367 (Fla. 1941).

In regards to short-term rentals, Section 509.032(7)(b) states, “[a] local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental or vacation rentals.” Therefore, the regulation of short-term rentals is expressly preempted by the

state, but the statute also states: “[t]his paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011. *Id.* Because the City’s short-term rental ordinance regulating the duration and frequency of a short-term rental was enacted prior to June 1, 2011, it not preempted.

II. City’s Zoning Powers

Florida law authorizes local governments to regulate local land development and promulgate zoning regulations. *Bennet v. Walton County*, 174 So.3d 386, 388 (Fla. 1st DCA 2015); *See also Restigouche, Inc. v. Town of Jupiter*, 59 F.3d 1208, 1214 (11th Cir. 1995). Constitutional challenges to zoning regulations are analyzed under the rational basis test, analyzing whether a zoning regulation has a rational relationship to a legitimate government purpose. *Id.* Under federal law, there is a two-step inquiry for determining whether a zoning decision survives such rational basis scrutiny. *See Haves v. City of Miami*, 52 F.3d 918, 921-24 (11th Cir, 1995).

The first step is to identify any "legitimate government purpose ... which the enacting government body **could** have been pursuing." The second step "asks whether a rational basis exists for the enacting government body to believe that the legislation would further the hypothesized purpose." The inquiry "is concerned with the existence of a conceivably rational basis, not whether that basis was actually considered by the legislative body." The challenged enactment will fail rational basis review only if the court cannot identify a potential legitimate government purpose or if the relationship between that purpose and the challenged enactment is so attenuated as to be "arbitrary and irrational." *VTS Transp., Inc v. Palm Beach Cnty.*, 2017 WL 042331 (S.D. Fla. 2017). "In sum, those attacking the rationality of the legislative classification have the burden to negate every conceivable basis which might support it." *Id.*

In regards to the first step, it is not difficult to determine the legitimate government interest in supporting the amendment of the City’s Short-Term Rental Ordinance. The City has a substantial interest in maintaining the safety, aesthetics, character and tranquility of its residential neighborhoods, as well as in regulating traffic flow and maintaining property values. *See Jim Gall Auctioneers, Inc. v. City of Coral Gables*, 210 F.3d 1331, 1333 (Fla. 11th Cir. 2000)(the court has recognized that those governmental interests are legitimate). The seminal Supreme

Court zoning case, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 391 (1926), suggests others:

... promotion of the health and security from injury of children and others by separating dwelling houses from territory devoted to trade and industry; suppression and prevention of disorder; facilitating the extinguishment of fires, and the enforcement of street traffic regulations and other general welfare ordinances; aiding the health and safety of the community by excluding from residential areas the confusion and danger of fire, contagion, and disorder that in a greater or less degree attach to the location of stores, shops and factories. Another ground is that the construction and repair of streets may be rendered easier and less expensive by confining the greater part of the heavy traffic to the streets where business is carried on.

See also Village of Belle Terre v. Boraas, 416 U.S. 1, 9 (1974) ("A quiet place where the yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land use project addressed to family needs....The police power is not confined to elimination of filth, stench, and unhealthy places. It is amply to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people."); *Corn v. City of Lauderdale Lakes*, 997 F.2d 1369, 1375 (11th Cir. 1993) (holding that legitimate zoning interests include, but are not limited to protection from urbanization, exclusion of industry from residential areas, regulation of traffic, preservation of surrounding property values, regulation of city services and protection of a neighborhood's aesthetic value).

The exclusion of transient uses and other commercial enterprises from single-family neighborhoods further serve these legitimate purposes for single-family zoning restrictions, including the expectation of living in privacy from strangers within a community of fellow residents sharing a common interest in its long term well-being. See, e.g., Euclid, 272 U.S. at 391 ("the exclusion of buildings devoted to business, trade,

etc., from residential districts bears a rational relation to the health and safety of the community."); *see also Restigouche, supra; Haves, supra*. Because there is a conceivable rational basis for the zoning restriction at issue, the ordinance satisfies rational basis analysis.

The courts have also held that zoning regulation of transient occupancy does not constitute an illegal taking because it involves no physical invasion of the property and leaves available alternative economically viable uses of an owners' land. *See, e.g., Cope v. City of Cannon Beach*, 855 P.2d 1083 (Or. 1993); *Ewing v. City of Carmel by the Sea*, 234 Cal. App. 3d 1579 (Cal. Ct. App. 1991).

Cope involved review of a land-use appeals board's decision upholding a municipality's prohibition on transient occupancy (defined as less than 14 days) in single-family neighborhoods. In that case, the court held that such a prohibition does not deprive the landowners of all economically-viable use of their property because it permits long term rentals and allows owners to reside in the homes. In *Ewing*, the court upheld the city of Carmel's ordinance confining accommodations for short-term visitors (less than 30 days) to areas outside the R-1 single-family zoning districts holding that "[a] zoning ordinance does not constitute a taking simply because it narrows a property owner's options." 234 Cal. App. 3d at 1591-92.

Similarly, the proposed amendments to the Short-Term Rental Ordinance does not involve a physical invasion of anyone's property and it obviously leaves alternative economically viable uses for the subject property. For example, the owner may sell the property, rent it for periods of longer than three months, or simply reside there himself.

Under the case law, the proposed amendments to the City's Short-Term Rental Ordinance will pass constitutional muster.

III. Short-Term Rental Ordinance

Section 24-90.1 of the City Code regulates Short-Term Rentals in Residential Zoning Districts, and prohibits single-family dwelling units, including town houses, from being rented or leased to another person(s) more than three (3) times in a twelve-month period for a period of

three (3) months or less. This provision was adopted by the City in 2009, because the City found that single-family residences used on a transient basis have the potential to negatively impact the quality of life of the City's residents.

Since the adoption of the restriction in 2009 some property owners of single-family and town home properties have continued to engage in the transient rental and occupancy of said properties in violation of the City Code. This has created an excessive number of unruly guests, vehicular traffic, disruptive noise, litter, and other adverse impacts on surrounding residences. The illegal use of short-term rentals has caused and will continue to cause irreparable harm to the residential communities by interfering with the peace, tranquility, texture and character of the affected neighborhoods, as well as a decrease in property values.

While the North Miami Beach City Code has had this legislation in place since 2009, enforcement has sometimes proven to be difficult. In addition to the number of violators throughout the City and related staffing issues, the Code Compliance Division has encountered challenges in enforcing code provisions governing illegal short-term rentals in residential zoning districts because of the high burden of proof required under Florida law. Many complaints received by the City reflect the advertisements of single-family and town home residences on various websites and print media. Therefore the existing ordinance needs to be strengthened so that the Code Compliance Division has better tools for enforcement.

IV. Rebuttable Presumptions

The proposed amendment includes the legal concept that an advertisement of an illegal short-term rental creates the rebuttable presumption that the property is being used in violation of the City's Short-Term Rental Ordinance.

A. What is a rebuttable presumption?

Black's Law Dictionary defines a "presumption" as:

1. Something that is thought to be true because it is highly probable.
2. A legal inference or assumption that a fact exists because of the known or proven existence of some other fact or group of facts. (10th ed. 2014) available on Westlaw.

Black's Law Dictionary further states,

Most presumptions are rules of evidence calling for a certain result in a given case *unless the adversely affected party overcomes it with other evidence*. A presumption shifts the burden of production or persuasion to the opposing party, who can then attempt to overcome the presumption.” *Id.* (emphasis added).

A “rebuttable presumption” is “an inference drawn from certain facts that establish a prima facie case, which may be overcome by the introduction of contrary evidence.” *Id.* It affects the burden of producing evidence. Once the adverse party introduces credible evidence to disprove the presumed fact, the presumption is no longer effective and the case is decided without regard to the presumed fact. See Public Health Trust of Dade Cnty. v. Valcin, 507 So. 2d 596, 600 (Fla. 1987). The purpose of a rebuttable presumption is to compel a judge or jury to find the presumed fact if no credible evidence is provided to disprove the presumed fact.

B. How Rebuttable Presumptions are Applied in Law

Rear-end auto collisions are a good example of how rebuttable presumptions work in a practical sense. Florida Courts have consistently held that there is a rebuttable presumption of negligence when the driver of an automobile rear-ends another vehicle. Eppler v. Tarmac America, Inc., 752 So.2d 592 (Fla. 2000); Gulle v. Boggs, 174 So.2d 26 (Fla. 1965); McNulty v. Cusak, 104 So.2d 785 (Fla. 2d DCA 1958). If an automobile driven by A collides with the rear of B's automobile, A is presumed to be negligent. However, once A introduces credible evidence to prove that A was not negligent (i.e. unexpected heart attack), the presumption disappears from the case. If A does not introduce evidence to prove that A was not negligent, the jury will be instructed that if they find that a rear-end collision occurred between an automobile driven by A and one driven by B, they must find that A was negligent.

The use of rebuttable presumptions are not new to the City of North Miami Beach. Indeed, the Short-Term Rental Ordinance creates a presumption that the owner of a property is acting in violation when “[t]he lease or rental a single-family residential dwelling, including town houses, more than three (3) times within a twelve-month period.” (North Miami Beach Code of Ordinances, art. VIII, § 24-90.1).

Similarly, the North Miami Beach Dangerous Intersection Safety Ordinance applies a rebuttable presumption of a red-light infraction against the registered owner of a vehicle who is detected to run a red-light by the use of traffic infraction detectors (i.e. red-light cameras). An owner is presumed to have violated the ordinance unless the owner can rebut the presumption by providing the City an affidavit demonstrating that the vehicle was in the care, custody, or control of another person without the owner's consent, or that the vehicle was subject to a short-term car rental agreement entered into between a car rental agency and the operator of the vehicle. (North Miami Beach Code of Ordinances, art. XA, § 8.2).

Other municipalities, such as the City of Miami Beach, have enacted ordinances prescribing a rebuttable presumption standard. The Miami Beach litter ordinance creates a rebuttable presumption that if ten or more handbills advertising a particular business are found as litter, the entity on the face of the handbill is presumed guilty of violating the litter ordinance. (Miami Beach Code of Ordinances art. III, § 46-92(i)). The individual or entity being cited under this section would have to rebut the presumption that they did not in fact litter. This could be accomplished by an affidavit or sworn testimony stating the handbills were taken by a non-agent of the entity or the individual accused of violating the litter ordinance.

Another Miami Beach ordinance that uses a rebuttable presumption is the Fire Protection and Prevention ordinance. (Miami Beach Code of Ordinances § 50-15(c)(2)). It states that, "[it] is a *rebuttable presumption* that a fire alarm is false if personnel responding from the Fire Department do not discover any evidence of fire or other emergency after following normal Fire Department operating procedures in investigating the incident." *Id.* (emphasis added). The ordinance then goes on to explain how to rebut the presumption. The individual or entity found in violation can provide evidence that they reasonably believed a fire-related emergency existed, that the alarm was activated by lightning or electrical surge, or that the alarm was activated by vandals. *Id.*

The use of rebuttable presumptions is also a common theme that runs through Florida law. Under State law, the following statutes create rebuttable presumptions:

- Fla. Stat. § 766.309 (2006). (Rebuttable presumption in medical malpractice cases regarding birth-related neurological injury).
- Fla. Stat. § 39.0139 (2016). (Rebuttable presumption of detriment to a child is created when a court of competent jurisdiction has found probable cause exists that a parent or caregiver has sexually abused a child).
- Fla. Stat. § 61.08 (2011). (Rebuttable presumption regarding duration of marriages when determining alimony).
- Fla. Stat. § 721.065 (2004). (Rebuttable presumption shall exist that an owner who has acquired more than seven timeshare interests did not acquire them for her or his own use and occupancy).

Case law supports the use of a rebuttable presumption in regards to short-term rental ordinances. Recently, in *Charles Fritz v. City of Vero Beach*, the City's short-term rental ordinance was challenged in the 19th Judicial Circuit. 2016 WL 3921482 (2016). The Vero Beach ordinance also contained a rebuttable presumption of a violation if the property was advertised to the public as a place regularly rented for periods of less than 30 days. *Id.* The court found no merit on the Plaintiff's position that the addition of the rebuttable presumption is a regulation on the duration or frequency of vacation rentals. *Id.*

V. Conclusion

The proposed amendments do not impose additional restrictions, prohibitions, or regulations on short-term rentals. It adds a rebuttable presumption that an advertisement of an already illegal short-term rental is proof that the property is being used in violation of the current ordinance. The amendments will be an effective tool to assist the Code Compliance Division in enforcing the Short-Term Rental Ordinance, not an additional restriction on the illegal use of short-term rentals.

ORDINANCE NO. 2017-14

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA AMENDING THE CODE OF ORDINANCES, CHAPTER XXIV "NORTH MIAMI BEACH ZONING AND LAND DEVELOPMENT CODE," ARTICLE VIII, "SUPPLEMENTAL REGULATIONS," SECTION 24-90.1 "SHORT-TERM RENTALS IN RESIDENTIAL ZONING DISTRICTS" BY PROHIBITING THE ADVERTISING OF SHORT TERM RENTAL OF RESIDENTIAL PROPERTIES IN VIOLATION OF THIS SECTION, ESTABLISHING A REBUTTABLE PRESUMPTION STANDARD FOR ADVERTISING AND ADVERTISEMENT EVIDENCE AND ESTABLISHING A REGISTRATION PROCESS AND AN ENFORCEMENT MECHANISM AND PENALTY SCHEDULE; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING FOR SEVERABILITY; CODIFICATION; AND FOR AN EFFECTIVE DATE.

WHEREAS, Section 24-90.1 of the City Code regulates Short-Term Rentals in Residential Zoning Districts and generally prohibits single-family and town home properties from being rented or leased to another person(s) more than three (3) times in a twelve-month period for a period of three (3) months or less, with limited exceptions; and

WHEREAS, some property owners of single-family and town home properties continue to engage in the transient rental and occupancy of said properties in violation of the City Code, creating an excessive number of unruly guests, vehicular traffic, disruptive noise, litter, and other adverse impacts on surrounding residences; and

WHEREAS, the illegal use of short-term rentals has caused and will continue to cause irreparable harm to the residential communities by interfering with the peace, tranquility, texture and character of the affected neighborhoods, as well as a decrease in property values; and

WHEREAS, the City has a substantial interest in maintaining the safety, aesthetics, character and tranquility of its residential neighborhoods, as well as in regulating traffic flow, and this amendment is narrowly tailored to directly advance the City's interests; and

WHEREAS, the Code Compliance Division has encountered challenges in enforcing code provisions governing illegal short-term rentals in residential zoning districts because of the high burden of proof required under Florida law; and

WHEREAS, many complaints received by the City reflect the advertisements of single-family and town home residences on various websites and print media; and

WHEREAS, an effective way to assist the Code Compliance Division in enforcing the Short-Term Rental Ordinance is to prohibit the advertising of illegal uses for single-family and town home properties in the City; and

ORDINANCE NO. 2017-14

WHEREAS, by amending the ordinance to include a rebuttable presumption that an advertisement of an illegal short-term rental is proof that the property being advertised is being used in violation of the Code, will aid in the enforcement of Section 24-90.1; and

WHEREAS, by amending the ordinance to provide for injunctive relief, the City will have an alternative and effective means of enforcement; and

WHEREAS, by delivering a letter to the Miami-Dade Property Appraiser and the Miami-Dade Tax Collector with a copy of the order adjudicating the violation of the ordinance, it will provide the Code Compliance Division with another tool in compelling compliance with the ordinance; and

WHEREAS, the Mayor and City Commission wish to provide for increased penalties consistent with 162.09 (2)(d) for violations of the ordinance; and

WHEREAS, the City's Planning and Zoning Board, as the Local Planning Agency, held a duly noticed public hearing on November 13, 2017, and reviewed the proposed amendment for consistency with the City of North Miami Beach's Comprehensive Plan, and recommend approval by a vote of 5 to 0; and

WHEREAS, the City Commission believes the proposed amendment is consistent with the North Miami Beach Comprehensive Plan and is in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Commission of the City of North Miami Beach, Florida:

Section 1. The foregoing recitals are true and correct.

Section 2. Chapter 24, Article VIII, Section 24-90.1, entitled "Short-Term Rentals in Residential Zoning Districts" is amended as follows:

Sec. 24-90.1 - Short-Term Rentals in Residential Zoning Districts.

- (A) It shall be unlawful for ~~the owner of one (1) or more~~ single-family dwelling units, including town houses but excluding mobile homes in the MH-1 Zoning District, to be rented or leased a dwelling to another person(s) more than three (3) times in a twelve-month period for a period of three (3) months or less. The lease or rental of a single-family residential dwelling, including town houses, more than three (3) times within a twelve-month period shall create a rebuttable presumption ~~that the owner is acting in of a~~ violation of this section.
- (B) This section shall not apply to duly licensed group homes listed in the zoning district regulations as either permitted or conditional uses.
- ~~(C) Violations of this section shall be subject to enforcement as provided by Section 166.0415, Florida Statutes. In addition to any penalty herein provided, or otherwise provided by law or the Code of Ordinances of the City of North Miami Beach, Florida for the violation of any provision of this Code or any condition duly imposed by the City, the City may bring suit in the Circuit~~

Court to enjoin, restrain, or otherwise prevent the violation of any provision of this Code or any condition duly imposed by the City.

~~(D)(C) In order to be fair to those who acted in good faith and instituted short term rentals in residential zoning districts without first obtaining a code interpretation from the Director of Community Development, the properties that were engaged in short term rentals more than three (3) times in a twelve month period of less than three (3) months duration prior to the effective date of this section shall be permitted to apply for a Business Tax Receipt, pursuant to Section 12.31(87)(b) and for each property, engaging in short term rentals. A limited number of properties were granted legal-nonconforming status for the operation of short-term rentals in single-family zoning districts with the adoption of Ordinance 2009-25. These properties have obtained Business Tax Receipts as per Ordinance 2009-25. For these specific properties:~~

- (1) The Business Tax Receipt shall specifically state that it is issued to allow rentals of less than three (3) months duration, only so long as: 1) the property is not rented for a duration of less than seven (7) days; and 2) the ownership of the property or the business renting the property does not change. Upon change of ownership of either the property or the business, or demolition or substantial renovation of the property, the Business Tax Receipt shall extinguish. ~~or~~ Upon the lease of the property for less than seven (7) days duration, the Business Tax Receipt allowing rentals for periods of less than three (3) months shall expire be subject to revocation upon a finding of violation by the Special Magistrate. , and the property shall be subject to the terms of this section.
- (2) No Business Tax Receipt shall be issued until the owner/applicant shows proof of compliance with chapter 12 of the City's Code, and provides sufficient proof that the short-term rentals were established prior to the effective date of this section.

(D) The following mandatory conditions shall apply to all rentals under Section 24-90.1:

- (1) Registration. In order for a property owner with the City of North Miami Beach to allow another person to occupy any residential property for a period of less than three months, or offer such rental services within the City of North Miami Beach, the property owner must apply for registration for the subject residential property, and the property has been issued a certificate of registration in accordance with the provisions of this Article.
- (2) Time period. All short-term rentals 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.
- (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 Miami-Dade or Broward County. Each agreement, license, or lease, or 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 at all times.
- (4) Entire residence. Only entire single family residences and townhomes legally created pursuant to applicable law, may be rented under this section, not individual rooms or separate portions of single family residences 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.
- (E) Any advertising or advertisement that promotes the occupancy of a residence in violation of this section, or use of the residential premises in violation of this section, shall be prohibited.
- "Advertising" or "advertisement" shall mean any form of communication or marketing used to encourage, persuade, or manipulate viewers, readers or listeners for the purpose of promoting occupancy or use of a residential property for the purposes of holding commercial parties, events, assemblies, gatherings, or the occupancy of a residence in violation of this section, as provided herein, as may be viewed through various media, including but not limited to, newspaper, magazines, flyers, handbills, television commercials, radio advertisement, outdoor advertising, direct mail, blogs, websites or text messages.
- (1) Presumption. The advertising or advertisement for the short-term rental of a single-family home or town home property for the purpose of allowing a rental in violation of this section shall create a rebuttable presumption against the owner that it is more likely than not that the property is being used in violation of Subsection 24-90.1. Pursuant to the procedures provided for in Sections 14-8.13 – 14-8.19, a rebuttable presumption against the owner that the residential property named in the Notice of Violation or as identified in the advertising or advertisement is a violation of this section shall be applied.
- (2) Any individual or entity cited for a violation of Subsection 24-90.1 may submit an affidavit, under penalty of perjury, in a form acceptable to the City Attorney, regarding the advertisement of the single family home or town home property, explaining that notwithstanding the advertisement the property was not used as an illegal short-term rental. Such affidavit shall void the rebuttable presumption against the owner that it is more likely than not that the property was used in violation of Subsection 24-90.1.
- (F) Violations of Subsection 24-90.1, excluding provisions under Subsection 24-90.1(C)(1), shall be subject to the following penalties.
- (1) \$500.00 per violation for the first violation;
 - (2) \$1,000.00 per violation for a repeat violation within the preceding 12 months;
 - (3) A violation occurring after one calendar year of a prior violation will revert to the \$500.00 penalty.
 - (4) A violation of Subsection 24-90.1 in conjunction with any other Code violation, the following enhanced penalties shall apply:
 - a. \$1,000.00 per violation for the first violation;
 - b. \$5,000.00 per violation for a repeat violation within the preceding 12 months, and automatic suspension for 1 year of the business tax receipt or the short-term rental certificate of registration.

- (5) In addition to such fines, the Special Magistrate may impose additional fines to cover all costs incurred by the City.
- (6) The short-term rental or occupancy shall be immediately terminated by the North Miami Beach Police Department or Building Official upon confirmation that a violation of Subsection 24-90.1 is deemed to pose an imminent life/safety hazard to the public.
- (7) In addition, 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 Subsection 24-90.1, as to each lease. If the City seeks an injunction to enforce compliance with or to prohibit a violation of Subsection 24-90.1, the City shall be entitled to recover reasonable attorney's fees and costs expended in seeking injunctive relief.
- (8) 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 judgement except for enforcement purposes. The City may foreclose or otherwise execute upon the lien.
- (9) The Code Compliance Division shall deliver a letter to the Miami-Dade Property Appraiser and the Miami-Dade Tax Collector, with a copy of the order adjudicating the violation. The letter shall notify these governmental agencies that the single-family residential property was used for transient rental or occupancy at the single family residential premises.

Section 3. All ordinances or parts of ordinances in conflict therewith be and the same are hereby repealed.

Section 4. If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

Section 5. It is the intention of the City of North Miami Beach and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of North Miami Beach, Florida. The Sections of this Ordinance may be renumbered or relettered to accomplish this intention and the word "Ordinance" may be changed to "Section", "Article", or other appropriate word as the Codifier may deem fit.

[SIGNATURE PAGE TO FOLLOW]

APPROVED on first reading this 19th day of **December, 2017**.

APPROVED AND ADOPTED on second reading this ____ day of _____, 2017.

ATTEST:

PAMELA L. LATIMORE
CITY CLERK

(CITY SEAL)

GEORGE VALLEJO
MAYOR

APPROVED AS TO FORM, LANGUAGE
AND FOR EXECUTION



JOSE SMITH
CITY ATTORNEY

Sponsored by: Commissioner Barbara Kramer.

Note: Proposed additions to existing City Code text are indicated by underline.