

CITY OF MIAMI BEACH STR BTR REQUIREMENT ORDINANCE
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WHEREAS, the rental of single-family and multi-family residential properties for periods of less than six months and one day is prohibited by the Land Development Regulations (“LDRs”) in many areas of the City; and

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WHEREAS, property owners of single and multi-family residence(s) or unit(s) continue to unlawfully engage in the transient rental and occupancy in violation of the City of Miami Beach Code of Laws and Ordinances (the “City Code”), which creates excessive number of guests, vehicles and noise, and cause inappropriate adverse impacts on the surrounding residences and residential neighborhood; and

WHEREAS, the City has a substantial interest in ensuring and maintaining the aesthetics, character and tranquility of its residential neighborhoods, as well as ensuring compliance with those City Codes regarding these commercial activities, and this provision directly advances these interests by serving a narrowly tailored interest of the City; and

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

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

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WHEREAS, the submission of business and B.T.R registration to the City will ensure compliance with the City Code, and will establish confirmation by the property owner that there has been a verification of the LDR’s for the transient rental and occupancy at the residential property; and

WHEREAS, the a registration affirmation form, will identify that the property owner has obtained the appropriate business tax receipt, and resort tax registration certificate pursuant to Chapter 10 of the City Code; and

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

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

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

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

CHAPTER 102

TAXATION

* * *

Article V. Local Business Tax.

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

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

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

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

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

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

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

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

superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the property involved. Such liens may be foreclosed or levied upon in the manner provided by law.

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

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

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

CHAPTER 102

TAXATION

* * *

Article V. Local Business Tax.

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

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

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

(1) The property owner affirms to the City in writing or online, for each residential property or unit (or any portion thereof) used by the property owner for transient rental, on a registration affirmation form prescribed by the City which states that the property owner:

a. Has confirmed that the City's Land Development Regulations, which are applicable to the residential property, authorize the property owner to

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engage in the transient rental or occupancy of the residential property or unit; and

- b. Has obtained a business tax receipt that has been issued to the property owner for the purpose of engaging in the transient rental or occupancy of the residential property or unit, as authorized by the City's Land Development Regulations; and
- c. Has registered the residential property with the City Finance Director, and obtained the appropriate resort tax registration certificate pursuant to Chapter 102, Article IV, Division 4 of this Code.
- d. Has complied with those applicable requirements of the American Disabilities Act Regulations and design standards, as may be required for the residential property or unit, in conjunction with attaining compliance with the Florida Fire Prevention Code and the Florida Building Code.
- e. Is, if applicable, authorized under the Condominium Association Documents and Agreements for the building in which the residential property is located to engage in the transient rental or occupancy of the residential property or unit.
- f. Has disclosed the Business Tax Receipt number for each residential property or unit in any advertisement, and that the Property Owner has fully complied with those provisions set forth within Section 102.386.

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

C. An online hosting platform company advertising transient rentals in the City may execute a Memorandum of Understanding with the City allowing a residential property owner to apply online for a business tax receipt and resort tax registration certificate and file the registration affirmation form with the City as part of the process of registering to advertise on the company's online hosting platform.

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D. A property owner may comply with this Section through an online transient rental advertising platform, provided such advertising platform has executed a Memorandum of Understanding with the City allowing residential property owners to apply for a business tax receipt and resort tax registration certificate and file his/her registration affirmation form as part of registering to advertise on the company's said transient rental advertising platform.

E. Each Condominium Association in Miami Beach shall report to the City no later than July 30th of each on a written or online transient rental determination form, as prescribed by the City, whether or not the Condominium Association allows transient rentals within the condominium buildings covered under the Association's governing documents.

F. Penalties and enforcement.

(1) A violation of this Section shall be subject to the following fines:

- a. If the violation is the first offense, a person or business shall receive a warning;
- b. If the violation is the second violation within the preceding six months, a person or business shall receive a civil fine of \$2,000.00;
- c. If the violation is the third violation within the preceding six months, a person or business shall receive a civil fine of \$3,000.00 and shall be prohibited for a period of one year from the date of the third violation from using his/her residential property for transient rental purposes.
- d.

(2) Enforcement. The Code Compliance Department shall enforce this section. This shall not preclude other law enforcement agencies from any action to assure compliance with this section and all applicable laws. If a violation of this section is observed, the enforcement officer will be authorized to issue a notice of violation. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before a special master within fifteen (15) days after service of the notice of violation, instructions as to how to request an administrative hearing before a special master, and that the failure to appeal the violation within fifteen (15) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.

(3) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.

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- a. A violator who has been served with a notice of violation must elect to either:
- i. pay the civil fine in the manner indicated on the notice of violation; or
 - ii. request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ~~fifteen~~ **(15)** days of the service of the notice of violation.
- b. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. Applications for hearing must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.
- c. If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master may be informed of such failure by report from the police officer. The failure of the named violator to appeal the decision of the police officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.
- d. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. On or after the sixty-first (61st) day following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien.
- e. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
- f. The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ~~fifteen~~ **(15)** days of the service of the notice of violation.
- g. The special master shall not have discretion to alter the penalties prescribed in subsection C(1).

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SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3. SEVERABILITY.

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

SECTION 4. CODIFICATION.

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

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the _____ day of _____, 2016.

PASSED and ADOPTED this _____ day of _____, 2016.

ATTEST:

Mayor Philip Levine

Rafael E. Granado, City Clerk

Underline denotes new language

(Sponsored by Commissioners Joy Malakoff and John Elizabeth Alemán and Co-Sponsored by Vice-Mayor Michael Grieco).