

R5 E CONFORM FINES FOR COMMERCIAL USE OF SINGLE-FAMILY HOMES

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 7 OF THE MIAMI BEACH RESILIENCY CODE, ENTITLED "ZONING DISTRICTS AND REGULATIONS," BY AMENDING ARTICLE II, ENTITLED "DISTRICT REGULATIONS," BY AMENDING SECTION 7.2.2, ENTITLED "RS-1, RS-2, RS-3, RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICTS" BY AMENDING SUBSECTION 7.2.2.2, ENTITLED "USES (RS)" TO CONFORM THE FINE SCHEDULE FOR VIOLATIONS OF SUBSECTION 7.2.2.2 TO STATUTORILY PRESCRIBED LIMITS IN CHAPTER 162 OF THE FLORIDA STATUTES; AND, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

MIAMI BEACH

COMMISSION MEMORANDUM

TO:	Honorable Mayor and Members of the City Commission
FROM:	Interim City Manager Rickelle Williams
DATE:	June 26, 2024 First Reading

TITLE: CONFORM FINES FOR COMMERCIAL USE OF SINGLE-FAMILY HOMES
AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 7 OF THE MIAMI BEACH RESILIENCY CODE, ENTITLED "ZONING DISTRICTS AND REGULATIONS," BY AMENDING ARTICLE II, ENTITLED "DISTRICT REGULATIONS," BY AMENDING SECTION 7.2.2, ENTITLED "RS-1, RS-2, RS-3, RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICTS" BY AMENDING SUBSECTION 7.2.2.2, ENTITLED "USES (RS)" TO CONFORM THE FINE SCHEDULE FOR VIOLATIONS OF SUBSECTION 7.2.2.2 TO STATUTORILY PRESCRIBED LIMITS IN CHAPTER 162 OF THE FLORIDA STATUTES; AND, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

RECOMMENDATION

This item was requested by the Office of the City Attorney.

The Administration recommends that the City Commission approve the subject ordinance at First Reading and schedule a Second Reading Public Hearing.

BACKGROUND/HISTORY

On January 31, 2024, at the request of Mayor Steven Meiner, the Mayor and City Commission referred the proposed ordinance (Item C4 B) to the Planning Board.

ANALYSIS

The purpose of the attached ordinance amendment is to conform the penalties in the Resiliency Code to statutorily prescribed limits, in order to ensure that the City's prohibition on the commercial use of single-family homes is fully enforced with the maximum penalties allowed under Florida law.

In 2010, the City enacted Miami Beach Code Section 142-1111 (the "Ordinance"), prohibiting short-term rentals of apartment units or townhomes in specified zoning districts located within its boundaries. Property owners found in violation have been subject to mandatory fines, administered by special masters/magistrates, under the City's "alternate code enforcement system," which was expressly adopted pursuant to the authority of Part I of Chapter 162, Florida Statutes, also known as the "Local Government Code Enforcement Boards Act" (the "Act").

In 2018, a property owner filed a lawsuit in Circuit Court, challenging the City's Ordinance by alleging that the Ordinance conflicted with the Act by imposing fines in excess of the fines authorized by the Act. Following extensive litigation, the Third District Court of Appeal held that the City could not lawfully impose fines in excess of the fines authorized under the Act, and therefore the City was bound to impose fines within statutorily prescribed limits.

An amendment to the fines set forth in Section 7.2.2.2(d) of the City's Resiliency Code is necessary to bring the Ordinance into full compliance with statutorily prescribed limits, to ensure that the City's prohibition on the commercial use of single-family homes is fully enforced with the maximum penalties allowed under Florida law.

PLANNING BOARD REVIEW

On March 26, 2024, the Planning Board held a public hearing and transmitted the proposed ordinance to the City Commission with a favorable recommendation (6-0).

APPLICATION FEE WAIVER

The subject amendment is proposed on a comprehensive, citywide basis, and not on behalf of a private applicant or third party. Pursuant to section 2.4.1.c of the Land Development Regulations of the City Code, amendments to the City Code require the payment of the applicable fees in section 2.2.3.5, 2.2.3.6, and appendix A to the City Code. These fees may be waived by a five-sevenths (5/7ths) vote of the City Commission, based upon one or more of the following circumstances:

1. The City Commission determines that the proposed amendment is necessary due to a change in federal or state law, or to implement best practices in urban planning, or based on circumstances unique to the proposed amendment.
2. Upon the written recommendation of the City Manager acknowledging a documented financial hardship of a property owner(s) or developer(s).
3. If requested, in writing, by a non-profit organization, neighborhood association, or homeowner's association for property owned by any such organization or association, so long as the request demonstrates that a public purpose is achieved by enacting the applicable amendment.

The Administration recommends that the City Commission waive the applicable fees based on circumstances unique to the proposed amendment.

BUSINESS IMPACT ESTIMATE

In accordance with Section 166.041(4), Florida Statutes, the City of Miami Beach is required to assess whether a Business Impact Estimate is required for the subject ordinance. A Business Impact Estimate is not required for the subject ordinance as it implements an amendment to the Land Development Regulations.

FISCAL IMPACT STATEMENT

N/A

Does this Ordinance require a Business Impact Estimate? No
(FOR ORDINANCES ONLY)

The Business Impact Estimate (BIE) was published on . See BIE at:
<https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notices/>

FINANCIAL INFORMATION

CONCLUSION

The Administration recommends the following:

1. The City Commission approve the subject ordinance at First Reading and schedule a Second Reading Public Hearing.
2. In accordance with section 2.4.1.c.1 of the Land Development Regulations of the City Code, the City Commission waive the applicable fees based on circumstances unique to the proposed amendment.

Applicable Area

Citywide

Is this a “Residents Right to Know” item, pursuant to City Code Section 2-17?

Yes

Is this item related to a G.O. Bond Project?

No

Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying? No

If so, specify the name of lobbyist(s) and principal(s):

Department

Planning

Sponsor(s)

Mayor Steven Meiner

Co-sponsor(s)

Conform Fines for Commercial Use of Single-Family Homes

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 7 OF THE MIAMI BEACH RESILIENCY CODE, ENTITLED "ZONING DISTRICTS AND REGULATIONS," BY AMENDING ARTICLE II, ENTITLED "DISTRICT REGULATIONS," BY AMENDING SECTION 7.2.2, ENTITLED "RS-1, RS-2, RS-3, RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICTS" BY AMENDING SUBSECTION 7.2.2.2, ENTITLED "USES (RS)" TO CONFORM THE FINE SCHEDULE FOR VIOLATIONS OF SUBSECTION 7.2.2.2 TO STATUTORILY PRESCRIBED LIMITS IN CHAPTER 162 OF THE FLORIDA STATUTES; AND, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, In 2010, the City enacted Miami Beach Code section 142-1111 (the "Ordinance"), prohibiting short-term rentals of apartment units or townhomes in specified zoning districts located within its boundaries; and

WHEREAS, property owners found in violation were subject to mandatory fines, administered by special masters, under the City's "alternate code enforcement system," which was expressly adopted pursuant to the authority of Chapter 162, Florida Statutes; and

WHEREAS, in 2018, the City's Ordinance was challenged in the court of law, with allegations that the Ordinance conflicted with the Local Government Code Enforcement Boards Act ("Act") by levying fines in excess of those authorized by the Act; and

WHEREAS, following vigorous litigation, the Third District Court of Appeal held that the City could not lawfully levy fines in excess of those authorized under Act, and therefore City was bound to impose fines within statutorily prescribed limits; and

WHEREAS, an amendment to the fines set forth in Section 7.2.2.2 of the Miami Beach Resiliency Code is necessary to bring the Miami Beach Resiliency Code provision into full compliance with statutorily prescribed limits.

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

SECTION 1. That Section 7.2.2.2 of Chapter 7 the Miami Beach Resiliency Code, entitled "Zoning Districts and Regulations," is hereby amended as follows:

MIAMI BEACH RESILIENCY CODE

* * *

CHAPTER 7 ZONING DISTRICTS AND REGULATIONS

* * *

ARTICLE II. DISTRICT REGULATIONS

* * *

SECTION 7.2.2 RS-1, RS-2, RS-3, RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICTS

* * *

Subsection 7.2.2.2. Uses (RS)

* * *

(d) Supplemental Prohibited uses Regulations (RS)

* * *

(1) Commercial use of single-family homes prohibited (RS)

* * *

(C) Regulations: Determination of commercial use.

* * *

(VII) *Enforcement.*

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

- i. If the violation is the first violation, ~~\$25,000.00~~ \$1,000 per day, per violation
- ii. If the violation is the second or greater violation, ~~within the preceding 18 months~~ \$50,000.00 ~~\$5,000 per day per violation~~
- iii. However, if the special magistrate finds the violation to be irreparable or irreversible in nature, the special magistrate may impose a fine not to exceed \$15,000.00 per violation.
- c. ~~If the violation is the third violation within the preceding 18 months....\$75,000.00~~
- d. ~~If the violation is the fourth or greater violation within the preceding 18 months....\$100,000.00~~

~~Fines for repeat violations shall increase regardless of location. The director of the code compliance department must remit a letter to the Miami-Dade Property Appraiser and Miami-Dade Tax Collector, with a copy of the special magistrate order adjudicating the violation, that notifies these governmental agencies that the single-family residential property was used for the purpose of holding a commercial party, event, assembly or gathering at the premises.~~

* * *

(IX) *Enhanced penalties.* The following enhanced penalties must be imposed, in addition to any mandatory fines set forth in subsection ~~442-109(d)~~ 7.2.2.2(d)(1)(C)(VII) above, for violations of section ~~442-109~~ 7.2.2:

(1) Enhanced penalties for this section:

- i. The commercial use must be immediately terminated, upon confirming a violation has occurred, by the Miami Beach Police Department and the code compliance department.
- ii. ~~If the offense is a second offense within the preceding 18-month period of time, and the total square footage of all building(s), accessory building(s),~~

~~dwelling(s), or structure(s) exceed 5,000 total square feet, then the special magistrate must impose an additional fine of \$5,000.~~

- iii ii. A certified copy of an order imposing the civil fines and penalties must be recorded in the public records, and thereafter shall constitute a lien upon any other real or personal property owned by the violator and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. The certified copy of an order must be immediately recorded in the public records, and the city may foreclose or otherwise execute upon the lien.

SECTION 2. REPEALER.

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

SECTION 3. SEVERABILITY.

If any section, 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 part of the Miami Beach Resiliency Code. The sections of this Ordinance may be renumbered or relettered 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 _____, 2024.

PASSED and **ADOPTED** this _____ day of _____, 2024.

ATTEST:


Steven Meiner, Mayor

Rafael E. Granado, City Clerk

First Reading: May 15, 2024
Second Reading: July 24, 2024

Verified By: _____
Thomas R. Mooney, AICP
Planning Director

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION



City Attorney NK

4/2/24

Date