



# MIAMI BEACH

## PLANNING DEPARTMENT Staff Report & Recommendation

Planning Board

TO: Chairperson and Members  
Planning Board

DATE: June 24, 2008

FROM: Jorge G. Gomez, AICP  
Planning Director

SUBJECT: **File No. 1877 - Ordinance - Codifying the Planning Director's Interpretation of the City Code.** An Ordinance of the Mayor and City Commission of the City Of Miami Beach, Florida, amending the Miami Beach City Code, Part B Land Development Regulations, Chapter 142, "Zoning Districts and Regulations," by amending Division 2, "RS-1, RS-2, RS-3 and RS-4 Single-Family Residential Districts," by amending Section 142-905, "Permitted Accessory Uses in Single-Family Districts," by adding new Subsection (B)(5) Limiting Leases of Single Family Homes to a Minimum of Six Months and One Day, to codify the Planning Director's Interpretation of the City Code; Providing for Repealer, Severability, Codification and an Effective Date.

### BACKGROUND

This proposed amendment would clarify and confirm that leases of single family homes for less than six months and one day, are prohibited. This proposed ordinance codifies what has previously been the Planning Director's Administrative Interpretation that rentals of less than six (6) months constitute transient, or hotel, occupancy, and are not permitted in single family districts.

### ANALYSIS

Over the past several years, it has come to the attention of the City that certain homeowners were renting their homes out to transient visitors. These rentals have been in various areas of the City, especially on the islands and waterfront areas, and have ranged from one-time incidents all the way to, in some cases, elaborate internet commercial marketing operations. In cases where clear evidence is found, the City has cited the homeowners for operating a commercial use in a residential-only zoning district, and operating a business without a certificate of use or occupational license.

The violations for the commercial use of single family homes, and of short term rental of homes to transient visitors, are based upon the Land Development Regulations (LDR's). The LDR's specify that the only permitted main use within single family residential zoning districts are single family dwellings. No commercial activities are permitted as main uses, and only very limited accessory commercial activities, such as garage sales, and home based business offices, are permitted as uses ancillary and customarily associated with the main use of the home as a single family residence.

In response to the question of what is the shortest period of time that a single family home in a single family zoning district may be rented out for, an Administrative Interpretation was prepared by the Planning Director in several years ago (see attached Administrative Interpretation 00-2). While the Land Development Regulations do not specifically state the amount of time a single family home in a single family zoning district may be rented for, the resort tax section of the City Code specifies that any rental for a time period of less than six (6) months constitutes a transient usage, and must pay resort tax. Therefore, the Planning Department has used the prohibition on commercial uses within residential districts, and the six month timeframe for resort tax, among other code provisions, to reach the official interpretation of the Code that rentals of less than six (6) months constitute transient, or hotel, occupancy, which are not permitted in single family districts.

Planning Department research indicates that this interpretation is common amongst many municipalities nationwide, and staff believes that the interpretation of the Code as explained above is a valid and legal interpretation, as authorized by the City Code, and does have the force of law.

Nevertheless, in an abundance of caution, and in response to a suit against the City challenging this restriction filed by a homeowner and another entity, an ordinance amendment has been prepared that would codify the existing interpretation limiting rentals of single family homes to no less than six months. This proposed amendment, codifying the Planning Director's interpretation, should be recommended for adoption if the Planning Board agrees that this is the correct policy, limiting the rental of single family homes to no less than six months. At its April 16, 2008 meeting, the City Commission confirmed its agreement with the Planning Director's Administrative Interpretation 00-2, issued February 29, 2000, that the City's Land Development Regulations prohibit the rental of a single family home for less than six months.

However, the Commission also referred to the Planning Board consideration of an ordinance amendment to the Land Development Regulations that would permit the rental of single family homes for minimum periods of 3 – 6 months no more than 3 times per year, subject to such additional regulations as the Planning Board proposes. The City Attorney's Office and the Administration have prepared a draft of that ordinance for review by the Planning Board, labeled "Seasonal Rental of Single Family Homes"; this proposed ordinance is discussed under separate cover. If the Planning Board decides to recommend the adoption of some version of the ordinance allowing seasonal rentals; then, rather than recommending this proposal codifying the previous administrative interpretation, the Board should recommend that the LDR's be amended to clarify and state clearly the resulting policy decision.

### **REVIEW CRITERIA**

In accordance with Section 118-163 (3), when reviewing a request for an amendment to these land development regulations, the Board shall consider the following where applicable:

- 1. Whether the proposed change is consistent and compatible with the comprehensive plan and any applicable neighborhood or redevelopment plans.**

**Consistent** – The Comprehensive Plan contains policies designed to protect the private residential character of these districts.

- 2. Whether the proposed change would create an isolated district unrelated to**

**adjacent or nearby districts.**

**Consistent** – The ordinance is not location specific, and would apply in all single family zoning districts city wide.

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

**Consistent** – The proposed change would not alter the physical characteristics of single family homes.

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

**Consistent** – The proposed amendment helps ensure that increased demands for city services that might result from transient usage in single family areas is limited.

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

N/A.

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

**Consistent** – The proliferation of short term rentals available on the internet has resulted in the increasing commercialization of the City's private single family residential areas.

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

**Consistent** - The proposed amendment is designed to protect living conditions in our single family neighborhoods, by preventing transient visitors, who have less of a stake in the continued stability and order of the surrounding neighborhoods. Increased traffic, parking problems, and lack of on-site owner supervision have all been identified as potential problems with transient usages.

**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.**

**Consistent** - The proposed change will not negatively affect traffic congestion, in fact, in specific single family neighborhoods, it may help to reduce traffic problems caused by increased transient usage of single family homes.

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

**Consistent** - The proposed change would not reduce light and air.

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

**Consistent** – Allowing the introduction of transient renters may be perceived as causing a change in the private, single family residential character of the subject neighborhoods, and could negatively impact property values. This proposed amendment is designed to prevent such a negative impact.

**11. Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.**

**Consistent** – Adjacent property owners may be reluctant to invest in upgrades and improvements to single family properties if it is perceived that transient renters are causing a change in the private, single family residential character of the subject neighborhood.

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

**Consistent** – This proposed ordinance, codifying the restriction on short term rentals less than six months, would continue to permit the use of single family properties for single family dwelling purposes. Properties zoned single family should be fully able to be utilized today for their specified purpose, and there is no overriding reason why the existing regulations should not be maintained.

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

**Consistent** – The City of Miami Beach contains numerous other zoning districts that can be used for short term, medium term and long term transient rental uses. The argument that some people can only use single family properties for their vacations or holidays is not valid in a City that contains such a variety of hotel and apartment uses.

**STAFF RECOMMENDATION**

Staff recommends that the Planning Board recommend to the City Commission the APPROVAL of the subject ordinance amendment, codifying the Planning Director's Administrative Interpretation regarding the minimum amount of time that a single family home in a single family zoning district may be rented out.

JGG\RGL\rgl

c: Gary Held, First Assistant City Attorney

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**CITY OF MIAMI BEACH**  
**PLANNING DEPARTMENT**



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To: PLANNING DEPARTMENT STAFF  
From: JORGE G. GOMEZ, DIRECTOR  
Date: February 29, 2000  
Subject: **ADMINISTRATIVE INTERPRETATION 00-2**  
**CODE OF THE CITY OF MIAMI BEACH**

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**QUESTION:** WHAT IS THE MINIMUM AMOUNT OF TIME THAT A SINGLE FAMILY HOME (IN A SINGLE FAMILY ZONING DISTRICT) MAY BE RENTED OUT?

**ANSWER:** A SINGLE FAMILY HOME MAY NOT BE RENTED OUT FOR A PERIOD OF LESS THAN SIX MONTHS.

AS PER SECTION 142-102 OF THE LAND DEVELOPMENT REGULATIONS OF THE CITY CODE, IN SINGLE FAMILY ZONING DISTRICTS, THE ONLY PERMITTED USES ARE SINGLE FAMILY DETACHED DWELLINGS. NO OTHER USE IS PERMITTED; HOTELS, OR OTHER TYPE OF TRANSIENT USAGES, ARE NOT PERMITTED USES IN SINGLE FAMILY ZONING DISTRICTS.

IF A SINGLE FAMILY HOME IN A SINGLE FAMILY ZONING DISTRICT WERE RENTED OUT FOR A PERIOD OF LESS THAN SIX MONTHS, PAYMENT OF RESORT TAX WOULD BE REQUIRED. SECTION 102 OF THE CITY CODE REQUIRES THE PAYMENT OF RESORT TAX FOR RENTALS OF LESS THAN SIX MONTHS.

FOR ZONING PURPOSES, A SHORT TERM RENTAL OF THIS NATURE, AND THE RESULTING PAYMENT OF THE APPLICABLE RESORT TAX, WOULD BE CONSTRUED AS A TYPE OF HOTEL USE, OR TRANSIENT USE, AND NOT BE CONSIDERED A PERMITTED USE IN THE CITY'S SINGLE FAMILY ZONING DISTRICTS.

JGG:RL

cc: Lawrence A. Levy, City Manager  
Janet Gavarrete, Assistant City Manager  
Al Childress, Code Compliance Director  
Gary Held, City Attorney's Office  
Bob Dixon, City Attorney's Office  
Planning Staff

**"CODIFICATION OF DIRECTOR'S INTERPRETATION"**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE MIAMI BEACH CITY CODE, PART B "LAND DEVELOPMENT REGULATIONS", CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," BY AMENDING DIVISION 2, "RS-1, RS-2, RS-3 AND RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICTS," BY AMENDING SECTION 142-905, "PERMITTED ACCESSORY USES IN SINGLE-FAMILY DISTRICTS," BY ADDING NEW SUBSECTION (b)(5) LIMITING LEASES OF SINGLE FAMILY HOMES TO A MINIMUM OF SIX MONTHS AND ONE DAY, AND BY CODIFYING THE PLANNING DIRECTOR'S INTERPRETATION OF THE CITY CODE; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, the Land Development Regulations restrict single-family residential properties to residential and compatible uses; and

**WHEREAS**, the rental of single-family residential properties in districts zoned RS-1, RS-2, RS-3 and RS-4 ("Single Family Residential Homes") for periods of less than six months and one day ("Seasonal Rentals") is prohibited, based upon Administrative Interpretation 00-2 of the Planning Director of various sections of the City's Code and land development regulations; and

**WHEREAS**, some persons have challenged the Interpretation that led to the above prohibition, and the City Commission desires to codify the prohibition in the City Code; and

**WHEREAS**, for the reasons expressed in the Planning Director's Interpretation 00-2, and the staff report that provides review and background for this ordinance, the provision herein regarding leases of single family homes is hereby adopted.

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

**SECTION 1.** That Section 142-905, "Permitted Accessory Uses In Single-Family Districts," is hereby amended by adding a new subsection (b)(5) as follows:

Sec. 142-905. Permitted Accessory Uses In Single-Family Districts.

\* \* \*

(b) Permitted accessory uses. The following are permitted accessory uses in single-family districts:

\* \* \*

(5) Leases of single family homes to a family (as defined in section 114-1) for not less than six months and one day.

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 renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

SECTION 4. Severability.

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

SECTION 5. Effective Date.

This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

ATTEST:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

First Reading:  
Second Reading:

APPROVED AS TO  
FORM AND LANGUAGE  
& FOR EXECUTION

Verified by: \_\_\_\_\_  
Jorge G. Gomez, AICP  
Planning Director

\_\_\_\_\_  
City Attorney                      Date

Underscore denotes new language