

IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

GENERAL CIVIL DIVISION

CASE NO. \_\_\_\_\_

NATALIE NICHOLS,

Plaintiff,

vs.

CITY OF MIAMI BEACH, FLORIDA;  
DAN GELBER, in his official capacity as  
Mayor of the City of Miami Beach;  
MICKY STEINBERG, in her official  
Capacity as Commissioner of the City of  
Miami Beach; MARK SAMUELIAN, in his  
Official capacity as Commissioner of the  
City of Miami Beach; MICHAEL  
GÓNGORA, in his official capacity as  
Commissioner of the City of Miami  
Beach; KRISTEN ROSEN GONZALEZ,  
in her official capacity as Commissioner  
of the City of Miami Beach; RICKY  
ARRIOLA, in his official capacity as  
Commissioner of the City of Miami Beach;  
and JOHN ELIZABETH ALEMÁN, in  
her official capacity as Commissioner of  
the City of Miami Beach,

Defendants.

\_\_\_\_\_ /

**PLAINTIFF'S COMPLAINT FOR DECLARATORY JUDGMENT**

1. This civil-rights lawsuit seeks to vindicate Plaintiff Natalie Nichols's constitutional rights to be treated equally to other, similarly situated property owners; and to be free from excessive punishments for engaging in the peaceful, non-nuisance use of her property.

2. The City of Miami Beach (the “City”) has violated those rights by banning home-sharing in most—but not all—areas of the City, and by adopting fines ranging from \$20,000 to \$100,000 *per violation* for homeowners, like Plaintiff, who rent their property on a short-term basis.

3. The fines violate the equal protection provisions of Article I, Section 2 of the Florida Constitution by treating similarly situated properties differently without any legitimate reason.

4. The fines are excessive punishments under Article I, Section 17 of the Florida Constitution, that harm both property owners and the general public.

5. The fines also violate, and are preempted by, Florida state law, Florida Statutes § 162.09(2)(d), which caps municipal property-code fines at a maximum of \$1,000 per day for the first violation and \$5,000 per day for repeat violations.

6. Therefore, Plaintiff Natalie Nichols, by and through her undersigned counsel, hereby file this Complaint and sue the City of Miami Beach, as follows:

7. Plaintiff Natalie Nichols, an individual, is a resident of Miami Beach, Florida.

8. Defendant City of Miami Beach is a municipality and political subdivision of the State of Florida.

9. Defendant Mark Samuelian is mayor of the City of Miami Beach and shares governing authority with the City of Miami Beach’s City Commission and is responsible for passing and enacting enforcing the ordinances complained of in this action. He is sued in his official capacity only.

10. Defendants Micky Steinberg, Mark Samuelian, Michael Góngora, Kristen Rosen Gonzalez, Ricky Arriola, and John Elizabeth Alemán are Commissioners on the City of Miami

Beach's City Commission, which is the governing body for the City of Miami Beach. Commissioners are responsible for passing and enacting the ordinances complained of in this action. They are sued in their official capacities only.

### **JURISDICTION AND VENUE**

11. At all times pertinent to this action, the acts complained of have occurred in, or are occurring in, Miami-Dade County, Florida.

12. This action arises under Article I, Section 2 ("Basic Rights") of the Florida Constitution; Article I, Section 17 ("Excessive Punishments") of the Florida Constitution; and Florida Statutes § 162.09(2)(d). Accordingly, this Court has subject matter jurisdiction over this action.

13. This Court has jurisdiction over declaratory judgment actions pursuant to Section 86.011, Florida Statutes.

14. Venue is proper in this circuit, as the properties in question are located in this circuit and the dispute arose in this circuit.

### **FACTS**

#### ***Miami Beach's Long History of Vacation Rentals Meets the Modern Era***

15. Since its inception, Miami Beach has been a vacation destination and has relied on tourism as the lifeblood of the city. In fact, most properties in Miami Beach are non-homesteaded investment properties. Tourism drives Miami Beach's local economy and breeds new business opportunities for local residents.

16. Home-sharing properties pay taxes, which pay for schools, emergency and community services, and infrastructure improvements.

17. The City's current ban on home-sharing runs counter to this long history as a popular destination for tourists.

18. Today, property owners have a wide variety of online platforms for renting their homes and properties on a short-term basis (periods of fewer than six months and one day). Two of the most popular are HomeAway and Airbnb.

19. The widespread use of HomeAway, Airbnb, and similar services by tourists and visitors has made short-term rentals more affordable by eliminating the need for property management companies to act as middlemen.

20. Plaintiff is informed and believes, and on that basis alleges, that most Miami Beach short-term rentals booked through HomeAway and Airbnb are for periods of one day to one month.

21. Renters who use HomeAway and Airbnb are encouraged to leave detailed feedback about their rental experience at a given property, and frequently do so. This feedback from renters is made publicly available by HomeAway and Airbnb. As a result, property owners have strong incentives to keep their property clean and in excellent repair if they hope to be successful.

***Plaintiff's Properties Are Prototypical Miami Beach Short-term Rentals***

22. Plaintiff Natalie Nichols owns two properties in Miami Beach.

23. She has owned her single-family home ("home") located at 1531 Stillwater Dr., since 2004.

24. She has owned her "four-plex" dwelling ("four-plex"), a single building with four individual apartments, located at 807 86th St., since 2006.

25. Plaintiff's home is a single-family residence. Over the years, Plaintiff has sometimes lived there, sometimes rented the home on a long-term basis, and sometimes conducted short-term rentals there.

26. The four-plex was originally designed to be rented, and short-term rentals were permitted at the time it was built. It was built in 1949 as a single structure divided into four apartments, as were most of the homes on the same block. The apartments are fairly small and are suited toward use by tourists and other short-term tenants.

27. Both properties border the Biscayne Bay. At the time Plaintiff acquired the properties, short-term rentals were legal.

28. In the past, Plaintiff has conducted short-term rentals in the single-family home.

29. In the past, Plaintiff has conducted short-term rentals in the four-plex, renting each of the four units in the building separately.

30. But for the City's prohibition on short-term rentals and extremely high fines, Plaintiff would resume conducting short-term rentals on both properties.

31. When used as short-term rentals, the properties are popular with tourists because of their location and the fact that they back up to the water.

32. Plaintiff has conducted repairs and invested in upgrades of both properties during the time she has owned them.

33. The City bans short-term rentals in the zoning districts in which Plaintiff's properties are located.

34. To Plaintiff's knowledge, neither of the properties has ever been the subject of any nuisance enforcement action.

35. The properties have received high marks on HomeAway and Airbnb for being well-maintained, clean, and comfortable.

***Miami Beach Plays Favorites By Allowing Home-sharing in North Beach  
While Prohibiting the Practice In Other, Similar, Areas***

36. Defendant City of Miami Beach has outlawed short-term rentals of residential property (home-sharing) in almost all areas of the City. *See* Miami Beach City Code § 142-1111(a).

37. A short-term rental is classified as any rental of property for a period of less than six months and one day. Miami Beach City Code §§ 142-905(b)(5) and 1111(a)(1).

38. The ban on short-term rentals for single-family homes is codified at Miami Beach City Code § 142-905. The ban on short-term rentals for townhomes, condominiums, and apartments is codified at Miami Beach City Code § 142-1111.

39. Importantly, the City does not ban home-sharing everywhere. It allows short-term rentals in the City’s North Beach neighborhood and described by law as “those properties fronting Harding Avenue, including buildings and properties located east of Harding Avenue and west of the alley, from the city line on the north, to 73rd Street on the south.” Miami Beach City Code § 142-1111(d).

40. Properties in the “North Beach” zone are allowed to conduct short-term rentals, which are banned everywhere else in the City.

41. Thus, property owners in North Beach enjoy a significant advantage over those property owners, like Plaintiff, who are not allowed to conduct short-term rentals. Not only is property more valuable if short-term rentals are permitted, but North Beach owners also enjoy much less competition under the current scheme and can accordingly charge higher prices for their short-term rentals.

42. The City’s carve-out benefits people who own property in North Beach, but harms both other property owners in the City and people who might wish to rent their properties from them.

43. North Beach contains many properties that are substantially the same as those owned by Plaintiff, particularly Plaintiff’s four-plex.

***Miami Beach Imposes the Highest Penalties for Home-Sharing in the Nation***

44. Unless they own property in North Beach, Miami Beach property owners who rent their property for periods of fewer than six months and one day are subject to escalating fines of \$20,000 for the first offense, \$40,000 for the second, \$60,000 for the third, \$80,000 for the fourth, and \$100,000 for each subsequent offense. *See* Miami Beach City Code §§ 142-905(b)(5)(a) and 1111(e)(1).

45. Miami Beach imposes some of the heftiest short-term rental fines in the country.

46. The City adopted the new fine schedule on March 19, 2016. Prior to that, the fines for home-sharing ranged from \$1,500 for the first violation to \$10,000 for the fifth and subsequent violations.

47. Under the law, the special master who hears property-code violations has no discretion to reduce these fines. *See, e.g.*, Miami Beach City Code §§ 142-905(b)(5)(a) (the “special master shall not waive or reduce fines”).

48. An order imposing a fine for a short-term rental must be recorded in the public records and constitutes a lien upon *any* property owned by the violator. Miami Beach City Code 102-386(c)(3)(d); 142-109(f)(1)(c); 142-905(b)(5)(b)(C); 142-1111(e)(5)(A)(3).

49. Plaintiff is informed and believes, and on that basis alleges, that the City employs approximately five code-enforcement officers who are tasked with actively identifying and punishing property owners who rent their homes on a short-term basis.

50. Plaintiff is informed and believes, and on that basis alleges, that the City has collected over \$5 million in penalties from property owners who violated the home-sharing ban.

51. Plaintiff is informed and believes, and on that basis alleges, that the City's fines for short-term rentals are the highest in the nation.

52. All conditions precedent to initiating suit have been performed, have occurred, or alternatively, have been waived.

### **COUNT ONE – EQUAL PROTECTION**

53. Plaintiff reasserts and realleges paragraphs 1 through 52 as if fully stated herein.

54. Miami Beach City Code §§ 142-905(b)(5) and 1111 prohibits the short-term rental of Plaintiff's properties, while allowing them in the North Beach area.

55. This discrimination is irrational and arbitrary, and it violates the right to equal protection of the law of people outside of North Beach who wish to offer homes as short-term rentals. This discrimination is not rationally related to any legitimate government interest and therefore is not a valid exercise of the City's police power to protect the public's health, safety, or welfare.

56. The City has no reasonable basis for believing that guests staying at homes in North Beach would pose a lesser threat to the public's health, safety, or welfare than guests who stay at homes outside of North Beach.

57. By imposing restrictions on property based not on the use of that property but on the irrelevant and arbitrary criterion of whether the property is located in or outside of North Beach



imposes a form of unconstitutional discrimination in violation of Article I, Section 2 of the Florida Constitution. This discrimination injures Plaintiff because it prevents her from renting out her properties simply because they are not located in North Beach.

58. Although financial damages are not sought by this lawsuit, Miami Beach City Code §§ 142-905(b)(5) and 1111 have caused, and will continue to cause, financial harm to Plaintiff.

59. As a result, Miami Beach City Code §§ 142-905(b)(5) and 1111 are unconstitutional under the Equal Protection Clause located in Article I, Section 2 of the Florida Constitution.

### *Remedies*

60. As Plaintiff believes that Miami Beach City Code §§ 142-905(b)(5) and 1111 violate Article I, Section 2 of the Florida Constitution, Plaintiff seeks declaratory relief to determine the extent of her rights in Miami-Dade County, Florida.

61. Plaintiff has incurred costs related to this lawsuit and seeks an award of reasonable costs pursuant to Florida Statutes § 86.081, as it is equitable to do so.

62. Plaintiff has an inadequate remedy at law for the substantial harm being caused by Miami Beach City Code §§ 142-905(b)(5) and 1111.

63. Miami Beach City Code §§ 142-905(b)(5) and 1111 have caused, and are causing, and will continue to cause irreparable harm to the Plaintiff and to the Miami Beach public.

64. The public interest would be served by enjoining enforcement of Miami Beach City Code §§ 142-905(b)(5) and 1111 and entering a declaratory judgment that the penalties imposed by those ordinances violate Article I, Section 2 of the Florida Constitution.

WHEREFORE, Plaintiff respectfully requests relief as follows:

- i. a declaratory judgment that Miami Beach City Code §§ 142-905(b)(5) and 1111 violate the equal protection clause located in Article I, Section 2 of the Florida Constitution;
- ii. a permanent injunction against the City of Miami Beach prohibiting the City from enforcing Miami Beach City Code §§ 142-905(b)(5)(a) and 1111(e) or setting penalties for short-term rentals that exceed those permitted by state law;
- iii. an award of costs; and,
- iv. any further relief as this Court deems just and proper.

### **COUNT TWO – EXCESSIVE PUNISHMENTS**

65. Plaintiff reasserts and realleges paragraphs 1 through 52 as if fully stated herein.

66. Miami Beach City Code §§ 142-905(b)(5) and 1111 violate Article I, Section 17 of the Florida Constitution by imposing excessive punishment, in the form of fines ranging from \$20,000 to \$100,000, on homeowners engaged in short-term rentals of their property.

67. The fines imposed by Miami Beach City Code §§ 142-905(b)(5) and 1111 are not remedial and do not compensate the City for any loss. The fines constitute a punishment meant to deter people from peacefully using their property for home-sharing.

68. Although financial damages are not sought by this lawsuit, Miami Beach City Code §§ 142-905(b)(5) and 1111 have caused, and will continue to cause, financial harm to Plaintiff.

69. The \$20,000 to \$100,000 fines are so great as to shock the conscience of reasonable people and are patently and unreasonably harsh and oppressive. The harm caused to Plaintiff is due to the threat of exorbitant fines, which violates Plaintiff's right to be free from excessive punishments.

70. By threatening exorbitant fines upon Plaintiff for engaging in short-term rental of her property, Miami Beach City Code §§ 142-905(b)(5) and 1111 violate the Excessive Punishments Clause located in Article I, Section 17 of the Florida Constitution.

71. As a result, Miami Beach City Code §§ 142-905(b)(5) and 1111 are unconstitutional under the Excessive Punishments Clause located in Article I, Section 17 of the Florida Constitution.

### *Remedies*

72. As Plaintiff believes that Miami Beach City Code §§ 142-905(b)(5) and 1111 violate Article I, Section 17 of the Florida Constitution, Plaintiff seeks declaratory relief to determine the extent of her rights in Miami-Dade County, Florida.

73. Plaintiff has incurred costs related to this lawsuit and seeks an award of reasonable costs pursuant to Florida Statutes § 86.081, as it is equitable to do so.

74. Plaintiff has an inadequate remedy at law for the substantial harm being caused by Miami Beach City Code §§ 142-905(b)(5) and 1111.

75. Miami Beach City Code §§ 142-905(b)(5) and 1111 have caused, and are causing, and will continue to cause irreparable harm to the Plaintiff and to the Miami Beach public.

76. The public interest would be served by enjoining enforcement of Miami Beach City Code §§ 142-905(b)(5) and 1111 and entering a declaratory judgment that the penalties imposed by those ordinances violate Article I, Section 17 of the Florida Constitution.

WHEREFORE, Plaintiff respectfully requests relief as follows:

i. a declaratory judgment that Miami Beach City Code §§ 142-905(b)(5) and 1111 violate the excessive punishments clause located in Article I, Section 17 of the Florida Constitution;

- ii. a permanent injunction against the City of Miami Beach prohibiting the City from enforcing Miami Beach City Code §§ 142-905(b)(5)(a) and 1111(e) or setting penalties for short-term rentals that exceed those permitted by state law;
- iii. an award of costs; and,
- iv. any further relief as this Court deems just and proper.

**COUNT THREE – PREEMPTION**

77. Plaintiff reasserts and realleges paragraphs 1 through 52 as if fully stated herein.

78. The City derives its powers from the State of Florida, and it accordingly may not exercise those powers in ways that conflict with, or are preempted by, state law.

79. Miami Beach City Code §§ 142-905 and 1111 conflict with and are preempted by Florida Statutes § 162.09(2)(d).

80. Florida Statutes § 162.09(2)(d) expressly limits the fines that the Miami Beach Zoning Board of Adjustment can impose to \$1,000 per day for the first violation and \$5,000 per day for repeat violations. However, the penalties the City currently enforces against property owners who allow short-term rentals vastly exceed these limits.

81. The City’s \$20,000 penalty for first-time violators is twenty times higher than the penalty allowed by Florida Statutes § 162.09(2)(d).

82. Likewise, the City’s escalating penalties of \$40,000, \$60,000, \$80,000, and \$100,000 for repeat home-sharing violations are astronomically higher than the \$5,000 penalty for repeat violators that is authorized by state statute.

83. Miami Beach City Code §§ 142-905 and 1111 also violate Florida Statutes § 162.09(2)(d)’s requirement that “[a]ny ordinance imposing such fines shall include criteria to be

considered by the code enforcement board or special magistrate in determining the amount of the fines.”

84. Miami Beach City Code §§ 142-905 and 1111 fail to provide criteria which the special master may consider when assessing penalties in specific cases. Instead, they specifically provide that the special master *may not* reduce the fines in any instance. As a result, these ordinances violate Florida Statutes § 162.09(2)(d).

### ***Remedies***

85. As Plaintiff believes that Miami Beach City Code §§ 142-905 and 1111 violate, conflict with, and are preempted by Florida state law, Plaintiff seeks declaratory relief to determine the extent of her rights in Miami-Dade County, Florida.

86. Plaintiff has incurred costs related to this lawsuit and seeks an award of reasonable costs pursuant to Florida Statutes § 86.081, as it is equitable to do so.

87. Plaintiff has an inadequate remedy at law for the substantial harm being caused by Miami Beach City Code §§ 142-905 and 1111.

88. Miami Beach City Code §§ 142-905 and 1111 have caused, and are causing, and will continue to cause irreparable harm to the Plaintiff and to the Miami Beach public.

89. The public interest would be served by enjoining enforcement of Miami Beach City Code §§ 142-905 and 1111 and entering a declaratory judgment that the penalties imposed by those ordinances, as well as their failure to provide any criteria to be applied when assessing penalties, conflict with and are preempted by Florida state law.

WHEREFORE, Plaintiff respectfully requests relief as follows:

i. a declaratory judgment that Miami Beach City Code §§ 142-905(b)(5) and 1111 are preempted by Florida Statutes § 162.09(2)(d);

ii. a permanent injunction against the City of Miami Beach prohibiting the City from enforcing Miami Beach City Code §§ 142-905(b)(5)(a) and 1111(e) or setting penalties for short-term rentals that exceed those permitted by state law;

iii. an award of costs; and,

iv. any further relief as this Court deems just and proper.

DATED this 26th day of June, 2018.

Respectfully submitted,

/s/ Matthew R. Miller \_\_\_\_\_

\*Christina Sandefur

\*Matthew R. Miller

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\* Motion for admission *pro hac vice* pending.