

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, PERTAINING TO ESTABLISHING A TEMPORARY MORATORIUM FOR UP TO AN ADDITIONAL 90 DAYS, THROUGH MAY 17, 2017, FROM THE EFFECTIVE DATE OF THIS ORDINANCE ON THE ACCEPTANCE, REVIEW, APPROVAL OR ISSUANCE OF ANY LAND DEVELOPMENT PERMITS AS THE TERM IS DEFINED IN FLORIDA STATUTES SECTION 163.3164(16), BUSINESS TAX RECEIPTS OR ANY OTHER LICENSE OR PERMIT FOR THE ESTABLISHMENT OR OPERATION OF DISPENSING FACILITIES WITHIN THE CITY ENGAGED IN THE ON-SITE DISTRIBUTION, SALE, DELIVERY OR RETAIL OF LOW-THC CANNABIS, MEDICAL CANNABIS OR CANNABIS DELIVERY DEVICES PURSUANT TO SECTIONS 381.986 AND 499.0295 OF THE FLORIDA STATUTES, IN ORDER TO PROVIDE THE CITY WITH AN OPPORTUNITY TO REVIEW AND ENACT REGULATIONS GOVERNING THE ESTABLISHMENT AND OPERATION OF DISPENSING FACILITIES; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR SEVERABILITY; REPEAL OF CONFLICTING ORDINANCE PROVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE RETROACTIVE TO OCTOBER 19, 2016; FOR ZONING IN PROGRESS PURPOSES, THIS ORDINANCE SHALL BE EFFECTIVE UPON FIRST READING OF THIS ORDINANCE.

WHEREAS, pursuant to the Compassionate Medical Cannabis Act of 2014, the Florida Legislature authorized a very limited number of large nurseries to cultivate, process, and dispense non-euphoric, low THC cannabis and operate dispensing organizations, as of January 1, 2015; and

WHEREAS, in 2016, the Florida Legislature amended Section 381.986 of the Florida Statutes to include medical cannabis, revise the requirements for physicians ordering low-THC cannabis, medical cannabis, or cannabis delivery devices, amend the requirements for the cultivation, processing, transportation, and dispensing of low-THC cannabis or medical cannabis, revise the Florida Department of Health's authority and responsibility and provide for penalties; and

WHEREAS, pursuant to Section 381.986(8) of the Florida Statutes, a municipality may determine by ordinance the criteria for the number and location of, and other permitting requirements that do not conflict with state law for dispensing facilities of dispensing organizations located within its municipal boundaries; and

WHEREAS, due to the historical prohibition of cannabis, the City of Miami Beach does not currently have any land development regulations governing the use of real property for the purpose of on- site distribution, sale, delivery or retail of low-THC cannabis, medical cannabis or cannabis delivery devices as provided by Florida Statutes Sections 381.986 and 499.0295; and

WHEREAS, in order to promote the effective regulation of such activities, the City Commission wishes to preserve the status quo while researching, studying, and analyzing the potential impact of dispensing facilities within the City's boundaries upon adjacent uses and the surrounding areas, including its effect on traffic, congestion, surrounding property values, demand for City services including inspections and increase

police monitoring, and other aspects of the operation of dispensing facilities impacting the general welfare of the community; and

WHEREAS, the City Commission found that a 150 day temporary moratorium, through February 18, 2017, on the issuance of business tax receipts and the acceptance, processing and approval of any building or zoning permits for the establishment and operation of dispensing facilities within the corporate limits of the City of Miami Beach is a reasonable period of time; and

WHEREAS, the City Commission finds that the City may require an additional 90 days to complete the underlying legislation, and look to extend the moratorium through May 17, 2017, which will allow the City sufficient time to determine what zoning districts are best-suited for this particular use, and how best to formulate land development and licensing regulations that will appropriately govern the use of real property for the purpose of on-site distribution, sale, delivery or retail of low-THC cannabis, medical cannabis or cannabis delivery devices; and

WHEREAS, the City Commission finds it is in the best interest of the citizens of the City to minimize and control the adverse effects of dispensing facilities by adopting appropriate land development and licensing regulations; and

WHEREAS, the ordinance is being referred to the City's Planning Board.

WHEREAS, as seen in *WCI Communities, Inc. v. City of Coral Springs*, 885 So.2d 912(Fla. 4th DCA 2004), a court will not interfere with the legislative act of establishing a temporary moratorium where there is a rational relationship to the City's legitimate general welfare concern; and

WHEREAS, moreover, a court should not set aside the determination of public officers in land use matters unless it is clear that their action has no foundation in reason, and is a mere arbitrary or irrational exercise of power having no substantial relation to the public health, the public morals, the public safety of the public welfare in its proper sense. *Id.*; and *Smithfield Concerned Citizens for Fair Zoning v. Town of Smithfield*, 907 F.2d 239, 243 (1st Cir. 1990); and

WHEREAS, the first step in ensuring a proper moratorium, is to ensure that the City's legislative has a rational basis and legitimate governmental purpose for the imposition of a moratorium; and

WHEREAS, the second step is for the Mayor and City Commission to establish a record that the moratorium would further the governmental purpose of creating, finalizing, and adopting regulations relating to medical cannabis; and

WHEREAS, it is well-settled that permissible bases for land use restrictions include concern about the effect of the proposed use on traffic, on congestion, on surrounding property values, on demand for City services, and on other aspects of the general welfare. *WCI Communities, Inc.*, 885 So.2d at 915 and *Corn v. City of Lauderdale Lakes*, 997 F.2d 1369, 1375 (11th Cir. 1993); and

WHEREAS, in applying an ordinance retroactively (1) there is clear evidence of legislative intent to apply the law retroactively, and (2) when allowed, the retroactive application is constitutionally permissible, in that the new law does not create new obligations, impose new penalties, or impair vested rights. *Jasinski v. City of Miami*, 269 F.Supp.2d 1341 (SD Fla. 2003); and

WHEREAS, for purposes of determining whether the retroactive application of a municipal ordinance impairs a vested right under Florida law, a vested right is defined as an immediate, fixed right of present enjoyment, *Id.*; and

WHEREAS, the moratorium is not the retroactive application of a tax; and

WHEREAS, the City is not interfering with a vested right obtained as a result of a final order from a City Land Use Board, or permit already obtained under the Florida Building Code; and

WHEREAS, the City Commission finds that imposing a temporary moratorium until adequate regulations have been developed, considered and adopted is in the best interest of the health, safety and general welfare of the community and the residents of the City; and

WHEREAS, the Mayor and City Commission desire to adopt up to a 90 day additional period for the moratorium, through May 17, 2017.

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

SECTION 1. Recitals. The foregoing recitals are incorporated by this reference as if fully set forth in the text of this Ordinance. The recitals evidence the concern, motivations and reasons for imposition of this Ordinance.

SECTION 2. Moratorium Imposed. The City of Miami Beach, Florida hereby declares a temporary building and zoning moratorium on the establishment and operation of dispensing facilities within the corporate limits of the City of Miami Beach. The City shall not accept, process or approve any application for business tax receipts, building permits, land use changes, zoning variances or permits, or any other development permits for any property, entity, or individual concerning or related to dispensing facilities engaged in permitted uses under Florida law, specifically Florida Statutes Sections 381.986 and 499.0295, whether as a principal or accessory use, so long as this ordinance is in effect. No person, corporation, partnership or other entity shall establish or operate a dispensing facility engaged in permitted uses under Florida law, specifically Florida Statutes Sections 381.986 and 499.0295.

SECTION 3: Duration Of Moratorium. The temporary moratorium shall take effect immediately upon adoption of this ordinance and shall terminate May 17, 2017, an additional 90 days from the adoption of original moratorium, unless the City Commission adopts the applicable land development and regulatory medical cannabis regulations on a date prior to May 17, 2017, in which case, this moratorium shall automatically end.

SECTION 4: Penalties. Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative proceeding (Special Master) having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

SECTION 5. Construction. This Ordinance is to be liberally construed to accomplish its objectives.

SECTION 6. Severability. That if any clause, section or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

SECTION 7. 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 8. Effective Date. This Ordinance shall take effect ten days following adoption.


PASSED and ADOPTED this ____ day of _____, 2017.

MAYOR

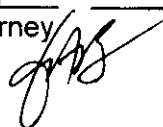
ATTEST:

CITY CLERK

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION



City Attorney



Date

12-13-16

First Reading: January 11, 2017

Second Reading: February 8, 2017

Verified by:



Thomas Mooney, AICP
Planning Director

(Sponsored by: Vice Mayor Joy Malakoff and Commissioner John Aleman)

Underscore denotes new language

~~Strikethru~~ denotes stricken language