

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ESTABLISHING A TEMPORARY MORATORIUM FOR 180 DAYS 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 SECTION 163.3164(16), FLORIDA STATUTES), BUSINESS TAX RECEIPTS, OR ANY OTHER LICENSE OR PERMIT FOR THE ESTABLISHMENT OR OPERATION OF ADULT CONGREGATE LIVING FACILITIES, ASSISTED LIVING FACILITIES, CRISIS STABILIZATION UNITS, RESIDENTIAL DETOXIFICATION CENTERS, COMMUNITY RESIDENTIAL HOMES, AND RESIDENTIAL MEDICAL REHABILITATION CENTERS, AND ANY SIMILAR OR DERIVATIVE USES ASSOCIATED WITH SUCH USES, WITHIN THE CITY, IN ORDER TO PROVIDE THE CITY WITH AN OPPORTUNITY TO REVIEW AND ENACT DEFINITIONS AND REGULATIONS GOVERNING SAID USES; PROVIDING PENALTIES FOR ANY VIOLATION HEREOF; PROVIDING FOR SEVERABILITY; REPEALER OF CONFLICTING ORDINANCE PROVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE RETROACTIVE TO FEBRUARY 8, 2017; FOR ZONING IN PROGRESS PURPOSES, THIS ORDINANCE SHALL BE EFFECTIVE UPON FIRST READING OF THIS ORDINANCE.

WHEREAS, the Mayor and City Commission have recognized the need for a temporary moratorium on the acceptance, review, approval or issuance of any land development permits, as defined in section 163.3164(16), Florida Statutes, business tax receipts or any other license or permit for the establishment or operation of adult congregate living facilities, assisted living facilities, crisis stabilization units, residential detoxification centers, community residential homes, and residential medical rehabilitation centers, and any similar or derivative uses associated with such uses, within the jurisdictional boundaries of the City; and

WHEREAS, the City has not defined crisis stabilization units, residential detoxification centers, community residential homes, and residential medical rehabilitation centers, and any similar or derivative uses associated with such uses; and

WHEREAS, the term adult congregate living facility is obsolete and should be updated to conform to state law, by replacing the obsolete term with "assisted living facility," and the City Code should be updated to include proper licensure requirements and to comply with state law requirements; and

WHEREAS, the City desires to provide for such uses, in appropriate locations, but the City must first complete a zoning and planning analysis to determine the locations best suited for such uses; and

WHEREAS, as 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 in processing plans 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.*; *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 the proper enactment of a moratorium, is to ensure that the City's legislation 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 amendments to the land development regulations to provide for and regulate the location of said uses; and

WHEREAS, the Mayor and City Commission desire to encourage compatible uses within the various zoning districts in order to provide for the needs of the community; and

WHEREAS, the Comprehensive Plan may require amendment to ensure the proper location for said uses, and the list of permitted, conditional, and prohibited uses, must be amended in the City's land development regulations; and

WHEREAS, siting of said uses must take into consideration the existing and proposed infrastructure, accessibility to emergency and public service vehicles, and proximity to public safety and public facilities; these considerations are critical for the City to ensure the health, safety and welfare of the City's residents and visitors; and

WHEREAS, the City Commission realizes that all these changes may have a consequence of increasing demand for City services; and

WHEREAS, the City requires time to review, consider, modify, process for adoption, and implement regulations pertaining to the referenced zoning districts, and to evaluate the extent that the existing zoning/land development regulation are effectively implementing the various uses; and

WHEREAS, the Courts have recognized that a temporary moratorium is an important land-use planning tool as a means of preserving the status quo during the planning process to ensure that the community's problems are not exacerbated during the time it takes to formulate a regulatory scheme; and

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

WHEREAS, in order for an ordinance to apply retroactively (1) there must be clear evidence of legislative intent to apply the law retroactively, and (2) when allowed, the retroactive application must be constitutionally permissible, in that the new law may not create new obligations, impose new penalties, or impair vested rights. *Jasinski v. City of Miami*, 269 F. Supp. 2d 1341 (S.D. 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 proposed herein is not the retroactive application of a tax; and

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

WHEREAS, the Mayor and City Commission desire to adopt a six (6) month moratorium on the acceptance, review, approval or issuance of any land development permits, as defined in section 163.3164(16), Florida Statutes, business tax receipts or any other license or permit for the establishment or operation of adult congregate living facilities, assisted living facilities, crisis stabilization units, residential detoxification centers, community residential homes, and residential medical rehabilitation centers, and any similar or derivative uses associated with such uses, within the jurisdictional boundaries of the City.

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 AREA. As of the effective date hereof, there is hereby imposed a Moratorium on the acceptance of applications for or the processing of, or the acceptance, review, approval or issuance of any land development permits, as defined in section 163.3164(16), Florida Statutes, business tax receipts or any other license or permit for the establishment or operation of adult congregate living facilities, assisted living facilities, crisis stabilization units, residential detoxification centers, community residential homes, and residential medical rehabilitation centers, and any similar or derivative uses associated with such uses, within the jurisdictional boundaries of the City.

The moratorium will not prevent or affect: (i) applications that have received a Land Use Board Order issued prior to February 8, 2017; (ii) a building permit for demolition issued prior to February 8, 2017; (iii) a lawful order of the building official; or (iv) an unsafe structures board order.

SECTION 3. CONSTRUCTION. This Ordinance is to be liberally construed to accomplish its objectives.

SECTION 4. DURATION OF MORATORIUM. This Ordinance shall remain in effect for one hundred eighty (180) days from the effective date hereof, unless earlier rescinded, repealed, or extended by an Ordinance or Resolution of the City Commission of the City of Miami Beach. Within ninety (90) days from the effective date hereof, the City staff shall provide an interim report to the City Commission as to the progress being made in the preparation of the land development regulation amendments.

SECTION 5. SEVERABILITY. 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 6. 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 7. EFFECTIVE DATE. This Ordinance shall be effective, retroactively, as of February 8, 2017.

PASSED and ADOPTED this _____ day of _____, 2017.

Philip Levine
Mayor

ATTEST:

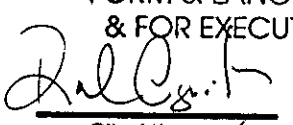
Rafael E. Granado
City Clerk

First Reading: February 8, 2017
Second Reading:

Verified by: _____
Thomas Mooney, AICP
Planning Director

(Sponsored by: Commissioner John Elizabeth Alemán)

Underscore denotes new language
~~Strikethrough~~ denotes stricken language

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION
 1-12-17

City Attorney Date
