

## North Beach National Register Conservation Districts Demolition Moratorium

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

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, PERTAINING TO THE SUBJECT OF A SIX (6) MONTH MORATORIUM FOR THE FOLLOWING AREAS/PROPERTIES: PROPERTIES LOCATED BETWEEN TATUM WATERWAY DRIVE/BYRON AVENUE ON THE WEST AND THE EASTERN LOT LINES OF LOTS FRONTING ABBOTT AVENUE ON THE EAST BETWEEN 77<sup>TH</sup> STREET ON THE SOUTH AND 86<sup>TH</sup> STREET ON THE NORTH; THE PROPERTIES LOCATED BETWEEN THE TATUM WATERWAY ON THE WEST AND THE EASTERN LOT LINES OF LOTS FRONTING ABBOT AVENUE ON THE EAST BETWEEN 75<sup>TH</sup> STREET ON THE SOUTH AND 77<sup>TH</sup> STREET ON THE NORTH; THE PROPERTIES LOCATED AT 8519, 8525, AND 8527 CRESPI BOULEVARD; THE PROPERTIES FRONTING NORMANDY DRIVE FROM RUE NOTRE DAME ON THE WEST TO BAY DRIVE ON THE EAST; THE PROPERTIES FRONTING 71<sup>ST</sup> STREET FROM RUE NOTRE DAME ON THE WEST TO BAY DRIVE ON THE EAST; THE PROPERTIES FRONTING THE EAST SIDE OF RUE VERSAILLES FROM 71<sup>ST</sup> STREET TO BIARRITZ DRIVE; THE PROPERTIES FRONTING BIARRITZ DRIVE FROM RUE VERSAILLES ON THE WEST TO RUE VENDOME ON THE EAST; THE PROPERTIES FRONTING RUE VENDOME FROM 71<sup>ST</sup> STREET ON THE NORTH TO BREST ESPLANADE ON THE SOUTH; THE PROPERTIES FRONTING BREST ESPLANADE; THE PROPERTIES FRONTING THE WEST SIDE OF BAY DRIVE FROM BREST ESPLANADE ON THE SOUTH TO 71<sup>ST</sup> STREET ON THE NORTH; THE PROPERTIES FRONTING THE EAST SIDE OF BAY DRIVE FROM 71<sup>ST</sup> STREET ON THE SOUTH TO THE NORMANDY WATERWAY ON THE NORTH; IMPOSING A TEMPORARY MORATORIUM UPON THE RECEIPT OF OR PROCESSING OF APPLICATIONS, PERMITS OR PENDING APPROVALS PERTAINING TO DEMOLITION OF STRUCTURES ON TATUM WATERWAY; PROVIDING FOR AN EFFECTIVE DATE RETROACTIVE TO FIRST READING, FEBRUARY 8, 2017; FOR ZONING IN PROGRESS PURPOSES, THIS ORDINANCE SHALL BE EFFECTIVE UPON FIRST READING OF THIS ORDINANCE, AND NO APPLICATIONS FOR DEMOLITION WITHIN THE DESIGNATED AREA SHALL BE ACCEPTED BY THE CITY; PROVIDING FOR EXCEPTIONS; PROVIDING FOR SEVERABILITY; REPEAL OF CONFLICTING ORDINANCE PROVISIONS; AND PROVIDING FOR AN EXPIRATION DATE.

**WHEREAS**, the Mayor and City Commission desire to create a conservation district overlay for the entirety of the North Beach National Historic District and the Normandy Isles National Historic District; and

**WHEREAS**, within the two National Historic Districts, the City has triggered zoning in progress to create two new local historic districts, which two districts are smaller than the larger National Historic Districts; and

**WHEREAS**, the Mayor and City Commission have implemented a temporary moratorium on the receipt of and processing of demolition permits to ensure the completion of the regulations relating to the creation of conservation district regulations for Tatum Waterway, from Byron Avenue to the North, and 77 Street to the South and has imposed a moratorium for that area; and

**WHEREAS**, as the conservation district regulations have not been drafted or implemented, the City desires to implement a moratorium for the portions of the proposed conservation district that is not currently subject to the Tatum Waterway Moratorium, or zoning in progress under the local historic district designation process: and

**WHEREAS**, as seen in *WCI Communities, Inc. v. City of Coral Springs*, 885 So.2d 912(Fla. 4<sup>th</sup> DCA 2004), a court will not interfere with the legislative act of establishing a temporary moratorium in processing plan 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 (1<sup>st</sup> 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 the conservation district regulations; and

**WHEREAS**, while the planning process is being solidified, some key areas of emphasis have emerged as the essential foundations to ensure the creation of the conservation district guidelines while garnering widespread support throughout the community, including but not limited to a balanced strategy to promote historic preservation while supporting incentives for greater development, density and activation; and

**WHEREAS**, the Mayor and City Commission desire to encourage innovative and compatible redevelopment that provides improved communities, enhances public benefits in the form of compatible architecture and uses;

**WHEREAS**, the creation of a master plan and analysis of the impacts due to such plan on parks, recreation, open space, infrastructure, accessibility of emergency and public service vehicular traffic and public safety and public facilities needs is important to the City to ensure the health, safety and welfare of the City's residents and visitors; and

**WHEREAS**, the City Commission has noted the rapid demolition of a multitude of structures within the study area, and is concerned that the character of the community, and possible increase of incompatible uses or structures is of concern; and

**WHEREAS**, the City in order to protect and preserve the character of the remaining areas not covered by the (a) Tatum Waterway moratorium or (b) zoning in progress for the local designation areas, while the City develops the conservation district regulations, the moratorium is necessary; and

**WHEREAS**, the City Commission realizes that all these changes may have a consequence of increasing demand for City services and on how these structures are handling for land development reasons; and

**WHEREAS**, the City requires time to review, consider, modify, process for adoption, and implementation regulations pertaining to the referenced zoning districts, and to evaluate the extent that the existing zoning/land development regulation are effectively implementing the plan; 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 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 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 (11<sup>th</sup> 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 Mayor and City Commission desire to adopt a six (6) month moratorium on demolition permits.

**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 applications for the demolition of any structure for the following areas/properties: properties located between Tatum Waterway Drive/Byron Avenue on the west and the eastern lot lines of lots fronting Abbott Avenue on the east between 77<sup>th</sup> Street on the south and 86<sup>th</sup> Street on the north; the properties located between the Tatum Waterway on the west and the eastern lot lines of lots fronting Abbot Avenue on the east between 75<sup>th</sup> Street on the south and 77<sup>th</sup> Street on the north; the properties located at 8519, 8525, and 8527 Crespi Boulevard; the properties fronting Normandy Drive from Rue Notre Dame on the west to Bay Drive on the east; the properties fronting 71<sup>st</sup> Street from Rue Notre Dame on the west to Bay drive on the east; the properties fronting the east side of Rue Versailles from 71<sup>st</sup> Street to Biarritz Drive; the properties fronting Biarritz Drive from Rue Versailles on the west to Rue Vendome on the

east; the properties fronting Rue Vendome from 71<sup>st</sup> Street on the north to Brest Esplanade on the south; the properties fronting Brest Esplanade; the properties fronting the west side of Bay drive from Brest Esplanade on the south to 71<sup>st</sup> Street on the north; the properties fronting the east side of Bay Drive from 71<sup>st</sup> Street on the south to the Normandy Waterway on the north.

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 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 conservation district ordinances.

**SECTION 5. 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 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, RETROACTIVE, to February 8, 2017.

PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
MAYOR

ATTEST:

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

APPROVED AS TO  
FORM AND LANGUAGE  
& FOR EXECUTION



City Attorney

1-23-17

Date

First Reading:  
Second Reading:

Verified by: \_\_\_\_\_  
Thomas Mooney, AICP  
Planning Director

(Sponsored by: Commissioner Ricky Arriola)  
Underscore denotes new language  
~~Strikethru~~ denotes stricken language