

North Beach Tatum Waterway Conservation District Demolition Moratorium

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, EXTENDING THE MORATORIUM THROUGH OCTOBER 31, 2017, FOR PROPERTIES FRONTING ON TATUM WATERWAY AND LOCATED ON THE WEST SIDE OF TATUM WATERWAY DRIVE AND BYRON AVENUE FROM 77TH STREET TO 87TH STREET, PROPERTIES LOCATED ON THE EAST SIDE OF HAWTHORNE AVENUE FROM 77TH STREET TO CRESPI BOULEVARD, PROPERTIES LOCATED ON THE EAST SIDE OF CRESPI BOULEVARD FROM HAWTHORNE AVENUE TO 85TH STREET, AND PROPERTIES LOCATED ON THE NORTH SIDE OF 85TH STREET BETWEEN CRESPI BOULEVARD AND BYRON AVENUE; IMPOSING A TEMPORARY MORATORIUM UPON THE RECEIPT OF OR PROCESSING OF APPLICATIONS, PERMITS OR PENDING APPROVALS PERTAINING TO DEMOLITION OF STRUCTURES ON TATUM WATERWAY; 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 have recognized the need for 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

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 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 (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 the North Beach vision through the Master Plan process; 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 Tatum Waterway, 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 (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 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 requires a limited amount of additional time, as the original moratorium is scheduled to expire on July 7, 2017, and although great progress has been made, including by the North Beach Steering Committee, but additional time is needed to obtain a consensus, and finalize the new draft regulations; and

WHEREAS, the Mayor and City Commission desire to extend the moratorium on demolition permits through October 31, 2017, or adoption of the Conservation District regulations, whichever is first.

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. On February 8, 2017, the City Commission enacted Ordinance, 2017-0471, which provided a six month moratorium through July 8, 2017, and which moratorium is being extended through this Ordinance. The imposed Moratorium shall apply to the acceptance of applications for or the processing of applications for the demolition of any structure for properties fronting on Tatum Waterway and located on the west side of Tatum Waterway Drive and Byron Avenue from 77th Street to 87th Street, properties located on the east side of Hawthorne Avenue from 77th Street to Crespi Boulevard, properties located on the east side of Crespi Boulevard from Hawthorne Avenue to 85th Street, and properties located on the north side of 85th Street between Crespi Boulevard and Byron Avenue.

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 through October 31, 2017, 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.

PASSED and ADOPTED this _____ day of _____, 2017.

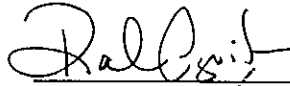
Philip Levine
Mayor

ATTEST:

Rafael E. Granado
City Clerk

First Reading: June 7, 2017
Second Reading:

Verified by: _____
Thomas Mooney, AICP
Planning Director



City Attorney *ghe*

Approved as to
form and language
& for execution
5-30-17
Date

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