

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

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, EXTENDING THE TEMPORARY MORATORIUM UNDER ORDINANCE 2017-4073, THROUGH DECEMBER 31, 2017, 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 A CONTINUED EFFECTIVE DATE OF FEBRUARY 8, 2017 AND EXTENDING THE MORATORIUM THROUGH DECEMBER 31, 2017; FOR ZONING IN PROGRESS PURPOSES, THIS ORDINANCE SHALL BE EFFECTIVE UPON FIRST READING OF THIS ORDINANCE.**

**WHEREAS**, on March 1, 2017, the Mayor and City Commission enacted Ordinance 2017-4073, which initiated a six (6) month moratorium relating to the following types of uses: 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 moratorium is set to expire August 7, 2017; and

**WHEREAS**, the City's planning department is in the midst of hiring a medical use planning consultant to advise on the draft ordinance, and as the City is also obtaining input from the City's medical advisory committee, and the community at large additional time is needed to finalize the proposed land use ordinances; and

**WHEREAS**, neither the Planning Board, nor the City Commission meet during the month of August, and additional time is needed to implement the regulations and therefore seek to extend the moratorium through December 31, 2017; and

**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 extend the 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 through December 31, 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 AREA.** The moratorium initiated under Ordinance 2017-4073, that was set to expire on August 8, 2017, is hereby extended through December 31, 2017. The imposed moratorium shall be 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 through December 31, 2017, unless earlier rescinded, repealed, or extended by an Ordinance or Resolution of the City Commission of the City of Miami Beach.

**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:

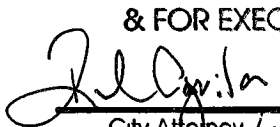
\_\_\_\_\_  
Rafael E. Granado  
City Clerk

First Reading            June 28, 2017  
Second Reading.        July 26, 2017

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  
  
\_\_\_\_\_  
City Attorney                      6-1-17  
Date