

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, PERTAINING TO ESTABLISHING A TEMPORARY MORATORIUM FOR SIX MONTHS 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 JUNE 28, 2017; 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, on October 19, 2016, the Mayor and City Commission enacted a temporary moratorium, thorough May 18, 2017, in order to better understand the land use, and zoning needs of the City, and to better understand the new legislation, and

WHEREAS, a second moratorium was proposed, but, was never enacted, and

WHEREAS, the planning board heard the items on February 28, 2017, and at which time "zoning-in-progress" went into effect, and

WHEREAS, on May 17, 2017, first reading of the medical cannabis business tax receipt ordinance and medical cannabis dispensary zoning ordinance was scheduled, however, the item was opened and continued to the June City Commission meeting; and

WHEREAS, first reading of both ordinances was held on June 7, 2017, and second reading was scheduled for July 26, 2017; and

WHEREAS, on June 9, 2017, the Florida legislature, during a special session, in less than 48 hours' time – introduced, modified, and passed, in both houses, a new cannabis bill (SB 8-A, 3rd Engrossed) unlike prior versions, which provides in relevant part. that the regulation of medical marijuana is preempted to the state, except as to the following: (1) the “medical marijuana treatment center (medical cannabis dispensary) cannot be within 500 feet of a public or private school, (2) that a city [or county] may ban medical marijuana treatment centers entirely, or (3), if a city does not ban medical marijuana treatment centers, the city “may not place specific limits, by ordinance, on the number of dispensing facilities that may locate within [that city]” “The city may determine by ordinance the criteria for the location of, and other permitting requirements that do not conflict with state law or department rule for, medical marijuana treatment center dispensing facilities located within the boundaries of [the city]” Additionally, a city “may not enact ordinances for permitting or for determining the location of dispensing facilities which are more restrictive than its ordinances permitting or determining the locations for pharmacies licensed under chapter 465 A municipality or county may not charge a medical marijuana treatment center a license or permit fee in an amount greater than the fee charged by such [city] to pharmacies, and

WHEREAS, these sudden modifications in the state law appear to invalidate many of the provisions of the City's draft medical cannabis business tax receipt ordinance and the City's medical cannabis zoning regulations, and

WHEREAS, the City needs to continue to analyze the new state legislation and its proposed impacts on the City of Miami Beach, and

WHEREAS, the City Commission finds that the City requires time to complete the underlying proposed legislation, based upon the unexpected state action, and

WHEREAS, the time 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, 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 an ordinance proposing a new moratorium for six (6) months

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, **RETROACTIVE TO FIRST READING**, and shall terminate, six (6) months 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 December 27, 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

ATTEST:

Philip Levine, Mayor

Rafael E. Granado, City Clerk

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

Verified by _____
Thomas Mooney, AICP
Planning Director

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

Date 6/13/17

(Sponsored by: Commissioners John Aleman, and Joy Malakoff)

Underscore denotes new language

~~Strikethru~~ denotes stricken language