

ORDINANCE No. 2019-08

AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, EXTENDING THE ESTABLISHED MORATORIUM FOR A PERIOD OF ONE-YEAR 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 A MEDICAL MARIJUANA TREATMENT CENTER WITHIN ALL ZONING DISTRICTS IN THE CITY OF DORAL, IN ORDER TO PROVIDE THE CITY WITH AN OPPORTUNITY TO REVIEW THE REGULATIONS ADOPTED BY THE STATE OF FLORIDA GOVERNING THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA TREATMENT CENTERS; PROVIDING FOR VESTED RIGHTS; REQUIRING EXHAUSTION OF ADMINISTRATIVE REMEDIES; PROVIDING FOR PENALTIES; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on March 21, 2018, the Mayor and City Council adopted Ordinance No. 2018-03 a one (1) year temporary moratorium 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 a Medical Marijuana Treatment Center within all zoning districts in the City of Doral; and

WHEREAS, the intent of the moratorium was to provide the city with an opportunity to review the regulations adopted by the State of Florida governing the establishment and operation of medical marijuana treatment centers; and

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, the 2017 Florida Legislature passed Senate Bill 8A (SB 8A) to enact Amendment 2 and Governor Rick Scott signed SB 8A into law on June 23, 2017; and

WHEREAS, SB 8A definition of “medical use” excluded the “possession, use, or administration of marijuana in a form for smoking” ... or of marijuana seeds or flower, except for flower in a sealed, tamper-proof receptacle for vaping. This provision became known as the “smoking ban”; and

WHEREAS, on July 6, 2017, the “smoking ban” was challenged in the Circuit Court for the Second Judicial Circuit by the “People United for Medical Marijuana, Inc. et al. v. Florida Department of Health, et al., Complaint, No. 2017-CA-1394, (Fl. 2nd Cir. Ct., July 7, 2017); and

WHEREAS, the complaint filed by the People United for Medical Marijuana, Inc., challenged the smoke ban based on two counts: 1. “That the smoking ban impermissibly altered the definition of marijuana established in Article X, section 29(b)(4), of the Florida Constitution, by excluding the right to possess forms of marijuana for smoking.” 2. “That Article X, section 29, of the Florida Constitution, implicitly authorized smoking marijuana in a private place by allowing the prohibition of smoking in public.”; and

WHEREAS, on May 25, 2018, the Circuit Court for the Second Judicial Circuit issued an order ruling that the smoking ban was unconstitutional; and

WHEREAS, on March 13, 2019, the Florida House of Representatives (HB 7015) affirmed the right to smoke medical marijuana, approving the SB 182 which amended various sections of the Florida Statutes related to medical marijuana including the prohibition against smoking medical marijuana (cannabis) from the definition of the “medical use” of marijuana that was already passed by the Florida Senate; and

~~**WHEREAS**, SB 8A permits the use of additional alternative forms of marijuana, and alternative dispensing methods; 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, due to the historical prohibition of cannabis, the City of Doral does not currently have any land development regulations governing 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 as provided by Sections 381.986 and 499.0295 Florida Statutes; and

WHEREAS, in order to promote the effective regulation of such activities, the City Council wishes to preserve the status quo while researching, studying, and analyzing the potential impact of dispensing facilities within the City's boundaries upon adjacent uses and the surrounding areas, including its effect on traffic, congestion, surrounding property values, demand for City services including

inspections and increase police monitoring, and other aspects of the operation of dispensing facilities impacting the general welfare of the community; and

WHEREAS, the City Council finds that a one-year moratorium on the issuance of business tax receipts and the acceptance, processing and approval of any building or zoning permits for the establishment and operation of dispensing facilities within the corporate limits of the City of Doral is a reasonable period of time; and

WHEREAS, the City Council finds that a one-year moratorium will allow the City sufficient time to determine which, if any, zoning districts are -suited for this particular use, and whether it is in the interest of the City and its residents 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 Council finds it is in the best interest of the citizens of the City of Doral to determine whether it is possible to minimize and control the adverse effects of Medical Marijuana Treatment Center 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 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 the City Council to establish a record that the moratorium would further the governmental purpose of creating, finalizing, and adopting regulations relating to Medical Marijuana Treatment Center; 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, 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 Council finds that extending the temporary moratorium for one (1) additional year for the city to do its due diligence while the State of Florida continues to refine the program and addresses legal challenges 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 the City Council desire to adopt a one-year extension to the established temporary moratorium on Medical Marijuana Treatment Centers and/or Medical Marijuana Dispensing Facilities in the City of Doral.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:

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 temporary moratorium previously enacted by Ordinance No. 2018-03 is hereby extended on the establishment and operation of any Medical Marijuana Treatment Center or any medical marijuana dispensary within the corporate limits of the City. 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 Medical Marijuana Treatment Centers and/or Medical Marijuana Dispensing Facilities 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 Medical Marijuana Treatment Center under Florida law, specifically Florida Statutes Sections 381.986 and 499.0295.

Section 3. Term. The established temporary moratorium is hereby extended by the City Council, shall automatically cease one (1) year from the date of adoption of this Ordinance. This moratorium will also be lifted upon the adoption of an ordinance

either banning medical marijuana treatment centers and/or related facilities or establishing rules regulating same, which shall be expeditiously pursued.

Section 4. Vested Rights. Nothing in this Ordinance shall be construed or applied to abrogate the vested right of a property owner to complete a development where the property owner can demonstrate each of the following:

- (1) A governmental act of development approval obtained prior to the effective date of this Ordinance;
- (2) Upon which the owner has detrimentally relied, in good faith, by making substantial expenditures; and
- (3) That it would be highly inequitable to deny the sign owner the right to complete the development.

Any property owner claiming to have vested rights under this section that has been denied a development order/permit must file an application with the City Council for a vested rights determination within ninety (90) days of the effective date of this section or the date of the denial, whichever is later. The application shall be accompanied by a fee of \$500.00 and contain a sworn statement as to the basis upon which the vested rights are asserted, together with documentation required by the City and other documentary evidence supporting the claim. The City Council shall hold a public hearing on the application and based upon the evidence submitted shall make a determination as to whether the owner has established vested rights.

Section 5. Exhaustion of Administrative Remedies. No property owner claiming that this section as applied constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights may pursue such

claim in court unless he/she/it has first exhausted the administrative remedies provided in this section.

Section 6. Penalties. Any 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 7. Implementation. The City Manager, City Clerk, and City Attorney are hereby authorized and directed to implement the provisions of this Ordinance and to take any and all necessary administrative actions as may be appropriate by their position to execute the purpose of this Ordinance.

Section 8. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, if being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 9. Conflicts. All ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 10. Effective Date. This Ordinance shall become effective upon its passage and adoption by the City Council, is binding on all successors, and assigns. The foregoing Ordinance was offered by Councilmember Cabrera who moved its adoption. The motion was seconded by Councilmember Cabral upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Claudia Mariaca	Yes
Councilwoman Digna Cabral	Yes
Councilman Pete Cabrera	Yes
Councilwoman Christi Fraga	Yes

PASSED AND ADOPTED on FIRST READING this 13 day of March, 2019.

PASSED AND ADOPTED on SECOND READING this 10 day of April, 2019.



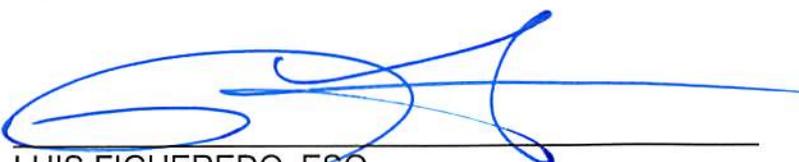
JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



CONNIE DIAZ, MMC
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:



LUIS FIGUEREDO, ESQ.
CITY ATTORNEY