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**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF FLAGLER BEACH, FLORIDA EXTENDING THE TEMPORARY MORATORIUM WITHIN THE JURISDICTIONAL LIMITS OF THE CITY OF FLAGLER BEACH ON ACCEPTANCE, REVIEW, PROCESSING, OR APPROVAL OF APPLICATIONS FOR DEVELOPMENT, SITE PLANS, ZONING APPROVALS, SPECIAL EXCEPTIONS, AND DEVELOPMENT ORDERS THAT WOULD ALLOW NEW DEVELOPMENT TO USE EXCEPTIONS TO THE THIRTY-FIVE FOOT HEIGHT LIMITATION FOR MECHANICAL AND ARCHITECTURAL ELEMENTS; DIRECTING STAFF TO STUDY AND DEVELOP LAND DEVELOPMENT CODE PROVISIONS AND OTHER RECOMMENDATIONS RELATED TO EXCEPTIONS TO THE THIRTY-FIVE FOOT HEIGHT LIMITATION FOR MECHANICAL AND ARCHITECTURAL ELEMENTS; PROVIDING FOR EXPIRATION AND EXTENSION OF THE MORATORIUM; PROVIDING STANDARDS FOR RELIEF FROM THE APPLICATION OF THE MORATORIUM; PROVIDING FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City is granted the authority, under Section 2(b), Art. VIII of the State Constitution, and Section 166.021, Florida Statutes, to exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, the City has imposed a temporary moratorium on accepting, review, processing or approval of applications for development activities, including site plans, zoning approvals, special exceptions and development orders that would allow new development to use exceptions contained in the Land Development Code for mechanical and architectural elements of buildings to exceed thirty-five feet in height; and

**WHEREAS**, the City has determined it appropriate and necessary to extend this temporary moratorium; and

**WHEREAS**, the City continues to analyze the issue; and

**WHEREAS**, the Planning and Architectural Review Board has received recommendations from the City's planning consultant; and

**WHEREAS**, the Planning and Architectural Review Board has made recommendations to the City Commission; and

**WHEREAS**, among the recommendations made by the Planning and Architectural Review Board is the request for a joint workshop for the City Commission and the Planning and Architectural Review Board to jointly discuss the issue and consider the possible solutions; and

**WHEREAS**, in order to provide time for the recommended joint workshop and to continue

engaging the community in the discussion, the City Commission finds an extension to the moratorium to be the best course of action; and

**WHEREAS**, it is the City's intent that this moratorium be applicable only to new development that has not already received site plan approval and processing and issuance of building permits for development that has already received site plan approval is expressly exempted from this moratorium; and

**WHEREAS**, the City is not aware of any pending applications for new development that would make use of any exemption to the thirty-five-foot height limitation; and

**WHEREAS**, this Ordinance is adopted in good faith, is not discriminatory against any property owner, is of limited duration, and is appropriate to the development of the amendments of the City's Zoning Code; and

**WHEREAS**, the City Commission finds this ordinance to be in the best interests of the public health, safety, and welfare of the citizens of Flagler Beach.

**NOW THEREFORE, IT IS HEREBY ORDAINED BY THE CITY OF FLAGLER BEACH, FLORIDA:**

**SECTION 1. RECITALS.** The foregoing recitals are hereby ratified and fully incorporated herein by reference as legislative findings of the City Commission of the City of Flagler Beach.

**SECTION 2. TEMPORARY MORATORIUM.** Beginning on the effective date of this ordinance, the moratorium related to the accepting, review, processing or approval of applications for development activities, including site plans, zoning approvals, special exceptions and development orders that would allow new development to use exceptions contained in the Land Development Code for mechanical and architectural elements of buildings to exceed thirty-five feet in height is extended for a period which will expire as set forth in Section 4, herein.

**SECTION 3. APPLICABILITY AND EXCEPTION RELATED TO EXISTING USES.** Nothing herein shall be interpreted to cause a suspension or termination of a use identified in Section 2 which is lawfully existing as of the effective date of this Ordinance. Building permits shall be processed for properties upon which a site plan or other approval relying upon the exemptions from the height limitation for mechanical and architectural elements has already been granted by the City.

**SECTION 4. EXPIRATION OF THE TEMPORARY MORATORIUM.** The temporary moratorium imposed by Section 2 of this Ordinance shall expire 180 days from the effective date of this ordinance, upon the adoption of an amendment to the Land Development Code implementing changes to the exemptions for mechanical and architectural elements, or upon the majority vote of the City Commission, whichever occurs earliest. If the City requires additional time to complete the enactment of amending zoning regulations applicable to the property subject to this moratorium, the City Commission may consider extending the moratorium through a

subsequent ordinance providing the justification for the extension.

**SECTION 5. RECOMMENDATIONS FOR LAND DEVELOPMENT CODE.** City staff is hereby directed to examine the current land use regulations and make recommendations to the City Commission and the Planning and Architectural Review Board related to updating the land use regulations applicable to exceptions from the height limitation for mechanical and architectural elements.

**SECTION 6. ADMINISTRATIVE RELIEF PROCEDURE.**

(a) The City Commission may authorize exceptions to the moratorium imposed by this Ordinance when it finds, based upon substantial competent evidence presented to it, that deferral of action on an application for permit, development order, or other official action of the City for the duration of the moratorium would impose an extraordinary hardship on a landowner or petitioner.

(b) A request for an exception based upon extraordinary hardship shall be filed with the City Clerk, including a non-refundable fee of \$350.00 by the owner/petitioner, or the petitioner with the consent of the owner/petitioner, to cover processing and advertising costs, and shall include a recitation of the specific facts that are alleged to support the claim of extraordinary hardship.

(c) A public hearing on any request for an exception for extraordinary hardship shall be held by the City Commission at the first regular meeting of the City Commission that occurs after the expiration of the period for publication of notice of the request for an exception.

(d) Notice of filing of a request for an exception, and the date, time, and place of the hearing thereon shall be published once at least 7 days prior to the hearing in a newspaper of general circulation within the city limits of the City of Flagler Beach, Florida.

(e) In reviewing an application for an exception based upon a claim of extraordinary hardship, the City Commission shall consider, at a minimum, the following criteria:

- (1) The extent to which the applicant has, prior to the effective date of this Ordinance, received a permit or approval to conduct a use subject to this moratorium.
- (2) The extent to which the applicant has, prior to the effective date of this Ordinance, made a substantial expenditure of money or resources in reliance upon a permits or approvals of the City of Flagler Beach directly associated with a use subject to this moratorium.
- (3) Whether the moratorium will expose the applicant to substantial monetary liability to third persons; or would leave the applicant completely unable, after a thorough review of alternative solutions, to earn a reasonable

investment backed expectation on the real property that is affected by this Ordinance.

(f) At a minimum, the City Commission shall consider the following non-exclusive factors under the criteria set forth in subsection (e) above:

(1) The history of the property;

(2) The history of the commercial, business or any use on the property; and

(3) The location of the property.

(g) At the conclusion of the Public Hearing and after reviewing the evidence and testimony placed before it, the City Commission shall act upon the request either to approve, deny, or approve in part and deny in part the request made by the applicant.

**SECTION 7. SEVERABILITY.** It is hereby declared to be the intention of the City Commission that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

**SECTION 8. CONFLICTS.** All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

**SECTION 9. EFFECTIVE DATE.** This Ordinance shall become effective immediately upon its passage and adoption.

PASSED ON FIRST READING THIS 25<sup>th</sup> DAY OF APRIL, 2024.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF MAY, 2024.

CITY OF FLAGLER BEACH, FLORIDA  
CITY COMMISSION

\_\_\_\_\_  
Patti King, Mayor

ATTEST:

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Penny Overstreet, City Clerk