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CITY COUNTY AND LOCAL GOVERNMENT ATTORNEY

August 26, 2025

VIA ELECTRONIC MAIL ONLY

City Commission
City of Lake Worth Beach
7 N. Dixie Hwy.
Lake Worth Beach, FL 33460

Re: Regulation of Businesses in Downtown through Zoning

Dear Mayor and Commissioners:

At the utility meeting on September 24, 2025, the Commission gave consensus for a future agenda item regarding utilizing zoning to limit certain businesses in the downtown area and establish a buffer zone. When considering limitations on certain types of businesses within a defined geographical area, including an entire municipality, local governments must take into consideration statutory preemptions and restrictions; the means, ability, and potential for enforcement; as well as the potential for challenge, including under the First Amendment. Zoning regulations, including distance requirements between the same use (i.e., alcoholic beverage sales establishments) or between certain uses and protected uses (i.e., alcoholic beverage sales establishments and churches, schools, and libraries) are often used to accomplish this goal. Zoning regulations and distance requirements between uses are generally considered land development regulations.

Chapter 205-190, Laws of Florida (SB 180), which was adopted by the Legislature and became effective on June 26, 2025, includes language that prohibits the City from adopting land development regulations that are more restrictive or burdensome than the existing regulations before October 1, 2027. The pertinent language from SB 180 is attached to this correspondence. Please note, Palm Beach County is part of the Federal Disaster Declaration for Hurricane Milton.

There is an exception to this preemption in SB 180 if the new land development regulations are initiated by the applicable private property owner (e.g., text amendment). However, the likelihood

of a private property owner applying for more restrictive regulations on just their property seems unlikely.

If the City initiates a change and adopts land development regulations that are more restrictive or burdensome before October 1, 2027, the City could face a legal challenge now authorized under SB 180. If the City does not move to repeal the challenged land development regulations and does not prevail in the legal challenge, the City may become liable for the other party's attorneys' fees.

Due to SB 180's preemption, which is in place through October 1, 2027, the undersigned recommends that the Commission defer efforts to limit certain businesses in the downtown area including the establishment of buffer zones until SB 180's preemption is lifted or otherwise expires.

If you have any questions, please contact me at (561) 686-8700.

Sincerely,

Elizabeth V. Lenihan

Elizabeth V. Lenihan

c: Jamie Brown, Interim City Manager
William Waters, Community Sustainability Director

Relevant Language from SB 180:

Section 28. (1) Each county listed in the Federal Disaster Declaration for Hurricane Debby (DR-4806), Hurricane Helene (DR-4828), or *Hurricane Milton* (DR-4834), and *each municipality within one of those counties*, may not propose or adopt any moratorium on construction, reconstruction, or redevelopment of any property damaged by such hurricanes; *propose or adopt more restrictive or burdensome amendments to its comprehensive plan or land development regulations*; or propose or adopt more restrictive or burdensome procedures concerning review, approval, or issuance of a site plan, development permit, or development order, to the extent that those terms are defined by s. 163.3164, Florida Statutes, *before October 1, 2027, and any such moratorium or restrictive or burdensome comprehensive plan amendment, land development regulation, or procedure shall be null and void ab initio. This subsection applies retroactively to August 1, 2024.*

(2) Notwithstanding subsection (1), any comprehensive plan amendment, land development regulation amendment, site plan, development permit, or development order approved or adopted by a county or municipality before or after the effective date of this act may be enforced if:

(a) The associated application is initiated by a private party other than the county or municipality.

(b) The property that is the subject of the application is owned by the initiating private party.

(3)(a) *A resident of or the owner of a business in a county or municipality may bring a civil action for declaratory and injunctive relief against the county or municipality for a violation of this section.* Pending adjudication of the action and upon filing of a complaint showing a violation of this section, the resident or business owner is entitled to a preliminary injunction against the county or municipality preventing implementation of the moratorium or the comprehensive plan amendment, land development regulation, or procedure. If such civil action is successful, the resident or business owner is entitled to reasonable attorney fees and costs.

(b) *Attorney fees and costs and damages may not be awarded pursuant to this subsection if:*

1. The resident or business owner provides the governing body of the county or municipality written notice that a proposed or enacted moratorium, comprehensive plan amendment, land development regulation, or procedure is in violation of this section; and

2. The governing body of the county or municipality withdraws the proposed moratorium, comprehensive plan amendment, land development regulation, or procedure within 14 days; or, in the case of an adopted moratorium, comprehensive plan amendment, land development regulation, or procedure, the governing body of a county or municipality notices an intent to repeal within 14 days after receipt of the notice and repeals the

moratorium, comprehensive plan amendment, land development regulation,
or procedure within 14 days thereafter.

(4) This section expires June 30, 2028.

(emphasis added).