



**RESOLUTION # 2017-30**

**A RESOLUTION OF THE MAYOR AND THE CITY COMMISSION OF THE CITY OF WEST MIAMI, FLORIDA, PERTAINING TO ESTABLISHING A TEMPORARY MORATORIUM FOR 180 DAYS FROM THE EFFECTIVE DATE OF THIS RESOLUTION 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 THE NEW CANNABIS BILL (SB 8-A, 3<sup>rd</sup> ENGROSSED) COMPASSIONATE MEDICAL CANNABIS ACT; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR SEVERABILITY; REPEAL OF CONFLICTING RESOLUTION PROVISIONS.**

**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 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, 3<sup>rd</sup> 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 be located within [that city] that "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 proposed ordinance(s) and the City's proposed 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 West Miami, 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 review the new cannabis bill (SB 8-A, 3<sup>rd</sup> Engrossed) and how best to formulate land development establishing regulations that will appropriately govern the distribution, and delivery 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**, the City is not interfering with a vested right obtained as a result of a final order from a City Planning and Zoning 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 a resolution proposing a new moratorium for one hundred eighty (180) days from the date of adoption of this resolution.

**NOW THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WEST MIAMI, FLORIDA AS FOLLOWS:**

**SECTION 1. Recitals.** The foregoing recitals are incorporated by this reference as if fully set forth in the text of this Resolution. The recitals evidence the concern, motivations and reasons for imposition of this Resolution.

**SECTION 2. Moratorium Imposed.** The City of West Miami, Florida hereby declares a temporary moratorium on the establishment and operation of dispensing facilities within the corporate limits of the City of West Miami. 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 resolution 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 resolution, and shall terminate, 180 days from the adoption of moratorium, unless the City Commission adopts the applicable land development and regulatory medical cannabis regulations on a date prior to 180 days from enacting this resolution.

**SECTION 4. Penalties.** Every person violating any provision of the Code or any resolution, 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 Resolution is to be liberally construed to accomplish its objectives.

**SECTION 6. Severability.** That if any clause, section or other part of this Resolution shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Resolution shall not be affected thereby, but shall remain in full force and effect.

**SECTION 7. Repealer.** All resolutions or parts of resolutions and all section and parts of sections in conflict herewith be and the same are hereby repealed.

**SECTION 8. Effective Date.** This Resolution shall take effect following adoption.

PASSED AND ADOPTED this 21<sup>st</sup> day of July, 2017.


APPROVED:

  
EDUARDO H. MUÑINA, MAYOR

ATTEST:

  
ANNERY GONZALEZ, CMC  
CITY CLERK

APPROVED AS TO FORM AND SUFFICIENCY:

  
JOSE A. VILLALOBOS, CITY ATTORNEY

ROLL CALL:

MAYOR EDUARDO H. MUÑINA	<u>Y</u>
VICE -MAYOR CANDIDA BLANCA	<u>Y</u>
COMMISSIONER JUAN M. BLANES	<u>Y</u>
COMMISSIONER RHONDA A. RODRIGUEZ	<u>Y</u>
COMMISSIONER LUCIANO L. SUAREZ	<u>Y</u>