

ORDINANCE NO. 2019-__

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR A MORATORIUM ON DEVELOPMENT WITHIN THE TOWN; PROVIDING FOR WAIVERS; PROVIDING PROCEDURES FOR VESTED RIGHTS AND JUDICIAL REVIEW; PROVIDING FOR EXEMPTIONS; PROVIDING FOR A TERM; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (“Town”) recognizes the importance of environmental stewardship in a variety of media, which include, but are not limited to, water, energy, air, and waste; and

WHEREAS, the Town is committed to providing a sustainable community for its residents and future generations; and

WHEREAS, the Town also seeks to preserve its vision and character and further develop its architectural and landscaping regulations for properties located within the Transit Corridor (TRC), Town Center (TC), and Neighborhood Residential (NR) zoning districts; and

WHEREAS, the Town also desires to develop necessary mobility solutions to enhance the quality of life of its residents; and

WHEREAS, the Town’s consultants are prepared to study and recommend amendments to the Town’s Land Development Regulations, which shall serve to further guide land use and development, so that development with the Town will further the Town’s goal of creating a sustainable environment, establishing a unique character, and providing enhanced quality of life; and

WHEREAS, permitting significant amounts of development prior to studying and implementing additional Land Development Regulations is contrary to ensuring a sustainable, unique, and mobile community; and

WHEREAS, the Town Council, in its capacity as the Local Planning Agency, has reviewed this Ordinance and has recommended approval; and

WHEREAS, after due notice and hearing, the Town Council finds that this Ordinance is consistent with the Town’s Comprehensive Plan and Code of Ordinances; and

WHEREAS, the Town Council finds that this Ordinance is necessary for the preservation and improvement of the environment, public health, safety and welfare of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA AS FOLLOWS:¹

Section 1. **Recitals.** The above-stated recitals are true and correct and are incorporated herein by this reference as the legislative intent of this Ordinance.

Section 2. **Moratorium Imposed; Moratorium Areas.** During the time that this Ordinance is in effect as specified in Section 8 below, there shall be a building moratorium on the issuance of development orders and development permits within the moratorium area. For purposes of this Ordinance, the terms “development orders” and “development permits” shall be as defined in Section 163.3164(15) and (16), Florida Statutes, respectively. The moratorium area shall be as follows:

- a. A moratorium is imposed on all properties in the Town to allow the Town to study, recommend, and adopt regulations to address mobility issues;
- b. A moratorium is imposed on all properties east of Old Cutler Road to allow the Town to study, recommend, and adopt regulations to address sea level rise and other environmental concerns to ensure sustainability and resiliency for the Town’s residents and future generations;
- c. A moratorium is imposed on all commercial properties within the following zoning districts to allow the Town to study, recommend, and adopt regulations related to architectural and landscape standards and designs: Transit Corridor (TRC), Town Center (TC), and Neighborhood Residential (NR).

Section 3. **Exemptions.** The following categories of development shall be exempt from this moratorium:

- a. The construction of one (1) single family home;
- b. The construction of multifamily property for older persons as defined by the Fair Housing Act, 42 U.S.C. § 3607;

¹ Coding: ~~Strikethrough~~ words are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with yellow highlighted ~~double strikethrough~~ and double underline.

- c. Expansions, repairs, or renovations to existing single family homes;
- d. Any property that has submitted a completed development application to the Town's Community Development Department prior to the effective date of this Ordinance; and
- e. Any development that has had an unexpired development order or development permit approved by the Town or the County prior to the effective date of this Ordinance.

Section 4. Waivers. Any property owner seeking a waiver under this Section 4 must file an application with the Town Council, for a determination within 45 days after the effective date of this Ordinance. The Town Council, after a public hearing, may grant a waiver to the moratorium provided above and permit development to proceed on a specific parcel where the Town Council determines, based upon substantial competent evidence, that the proposed development order or development permit requested by the waiver application will not detrimentally affect or be inconsistent with the regulations that will be created and adopted, will be compatible with surrounding land uses, and will not impair the public health, safety or welfare. The public hearing shall be advertised at least seven days prior to the hearing in a local newspaper. The grant of waiver, if any, shall be by resolution. The applicant shall be responsible for a \$1,500 waiver application fee and any other standard fees and requirements for a public hearing.

Section 5. Determination of Vested Rights or Denial of All Economic Use.

- a. Nothing in this Ordinance shall be construed or applied to abrogate the vested right of a property owner to complete development of a parcel where the property owner can demonstrate by substantial competent evidence each of the following:
 - i. A governmental act of development approval was obtained prior to the effective date of this Ordinance; and
 - ii. Upon which the property owner has detrimentally relied, in good faith, by making substantial expenditures; and
 - iii. That it would be highly inequitable to deny the property owner the right to complete the development.
- b. Nothing in this Ordinance shall be construed or applied to prevent development of a particular parcel where the property owner can demonstrate by substantial competent evidence that, because of the moratorium, no economic use can be made of the parcel.

- c. Any property owner claiming vested rights or denial of all use under this Section 5 must file an application with the Town Council for a determination within 45 days after the effective date of this Ordinance. The application shall be accompanied by an application fee of \$1,500.00 and contain a sworn statement as to the basis upon which the vested rights or denial of all use are asserted, together with documentation required by the Town and other documentary evidence supporting the claim. The Town Council shall hold a public hearing on the application and, based upon the competent substantial evidence submitted, shall make a determination as to whether the property owner has established vested rights or a lack of economic use for the parcel.

Section 6. Judicial Review. Judicial review of final decisions by the Town Council under Section 4 or Section 5 of this Ordinance shall be by the filing of a Petition for Writ of Certiorari in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County in accordance with the Florida Rules of Appellate Procedure for the review of quasi-judicial decisions of municipalities.

Section 7. Exhaustion of Administrative Remedies. No property owner claiming that this Ordinance, 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 or she has first exhausted the applicable administrative remedies provided in Sections 4 and 5 of this Ordinance.

Section 8. Term. The moratorium imposed by this Ordinance is temporary and shall be effective for a period of six (6) months from the effective date of this Ordinance, unless dissolved earlier by the Town Council. Further, the moratorium shall automatically dissolve upon the adoption of the implementing Land Development Regulations. The moratorium may be reasonably extended, if necessary, by Ordinance of the Town Council.

Section 9. Severability. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 10. Conflicts. All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 11. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading on the _____ day of June, 2019.

PASSED AND ADOPTED on second reading on the ____ day of _____, 2019.

TIM MEERBOTT
Mayor

ATTEST:

DEBRA E. EASTMAN, MMC
Town Clerk

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY FOR THE SOLE USE OF
THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN
COLE & BIERMAN, P.L.
Town Attorney

First Reading:
Moved by: _____
Second by: _____

Second Reading:
Moved by: _____
Second by: _____

FINAL VOTE AT ADOPTION:

Mayor Tim Meerbott	_____
Vice Mayor Sue Ellen Loyzelle	_____
Council Member Robert “BJ” Duncan	_____
Council Member Michael P. Callahan	_____
Council Member Roger Coriat	_____