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3 **ORDINANCE NO. 2023-05**

4 **AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF**
5 **FLAGLER BEACH, FLORIDA ESTABLISHING A TEMPORARY**
6 **MORATORIUM WITHIN THE JURISDICTIONAL LIMITS OF THE CITY**
7 **OF FLAGLER BEACH ON ACCEPTANCE, REVIEW, PROCESSING, OR**
8 **APPROVAL OF APPLICATIONS FOR DEVELOPMENT, SITE PLANS,**
9 **ZONING APPROVALS, SPECIAL EXCEPTIONS, AND DEVELOPMENT**
10 **ORDERS THAT WOULD ALLOW NEW DEVELOPMENT TO USE**
11 **EXCEPTIONS TO THE THIRTY-FIVE FOOT HEIGHT LIMITATION FOR**
12 **MECHANICAL AND ARCHITECTURAL ELEMENTS; DIRECTING**
13 **STAFF TO STUDY AND DEVELOP LAND DEVELOPMENT CODE**
14 **PROVISIONS AND OTHER RECOMMENDATIONS RELATED TO**
15 **EXCEPTIONS TO THE THIRTY-FIVE FOOT HEIGHT LIMITATION FOR**
16 **MECHANICAL AND ARCHITECTURAL ELEMENTS; PROVIDING FOR**
17 **EXPIRATION AND EXTENSION OF THE MORATORIUM; PROVIDING**
18 **STANDARDS FOR RELIEF FROM THE APPLICATION OF THE**
19 **MORATORIUM; PROVIDING FOR SEVERABILITY, CONFLICTS, AND**
20 **AN EFFECTIVE DATE.**

21 **WHEREAS**, the City is granted the authority, under Section 2(b), Art. VIII of the State
22 Constitution, and Section 166.021, Florida Statutes, to exercise any power for municipal purposes,
23 except when expressly prohibited by law; and
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25 **WHEREAS**, in 2006 the electors of the City of Flagler Beach amended the City Charter
26 to impose a thirty-five foot height limitation within the City; and
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28 **WHEREAS**, said height limitation in the Charter provided that the thirty-five foot height
29 limitation would apply as described in the City’s Land Development Code; and
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31 **WHEREAS**, the City’s Land Development Code exempts from the definition of building
32 height certain mechanical and architectural elements; and
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34 **WHEREAS**, as development in Flagler County continues at a rapid pace, developers
35 continue to find creative methods of maximizing density and intensity of uses; and
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37 **WHEREAS**, in order to ensure the City’s Land Development Code regulations implement
38 the will of the electors of the City as expressed in the Charter, the City Commission finds it
39 necessary and appropriate to pause processing of new development applications for buildings that
40 would make use of any exemption to the thirty-five foot height limitation; and
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42 **WHEREAS**, it is the City’s intent that this moratorium be applicable only to new
43 development that has not already received site plan approval and processing and issuance of
44 building permits for development that has already received site plan approval is expressly
45 exempted from this moratorium; and
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47 **WHEREAS**, the City is not aware of any pending applications for new development that
48 would make use of any exemption to the thirty-five foot height limitation; and
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50 **WHEREAS**, this Ordinance is adopted in good faith, is not discriminatory against any
51 property owner, is of limited duration, and is appropriate to the development of the amendments
52 of the City’s Zoning Code; and
53

54 **WHEREAS**, the City Commission finds this ordinance to be in the best interests of the
55 public health, safety, and welfare of the citizens of Flagler Beach.
56

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

59 **SECTION 1. RECITALS.** The foregoing recitals are hereby ratified and fully
60 incorporated herein by reference as legislative findings of the City Commission of the City of
61 Flagler Beach.
62

63 **SECTION 2. TEMPORARY MORATORIUM.** Beginning on the effective date of this
64 ordinance and continuing for a period of 180 days, a moratorium is hereby imposed upon the
65 accepting, review, processing or approval of applications for development activities, including site
66 plans, zoning approvals, special exceptions and development orders that would allow new
67 development to use exceptions contained in the Land Development Code for mechanical and
68 architectural elements of buildings to exceed thirty-five feet in height.
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70 **SECTION 3. APPLICABILITY AND EXCEPTION RELATED TO EXISTING**
71 **USES.** Nothing herein shall be interpreted to cause a suspension or termination of a use identified
72 in Section 2 which is lawfully existing as of the effective date of this Ordinance. Building permits
73 shall be processed for properties upon which a site plan or other approval relying upon the
74 exemptions from the height limitation for mechanical and architectural elements has already been
75 granted by the City.
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77 **SECTION 4. EXPIRATION OF THE TEMPORARY MORATORIUM.** The
78 temporary moratorium imposed by Section 2 of this Ordinance shall expire 180 days from the
79 effective date of this ordinance, upon the adoption of an amendment to the Land Development
80 Code implementing changes to the exemptions for mechanical and architectural elements, or upon
81 the majority vote of the City Commission, whichever occurs earliest. If the City requires additional
82 time to complete the enactment of amending zoning regulations applicable to the property subject
83 to this moratorium, the City Commission may consider extending the moratorium through a
84 subsequent ordinance providing the justification for the extension.
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86 **SECTION 5. RECOMMENDATIONS FOR LAND DEVELOPMENT CODE.** City
87 staff is hereby directed to examine the current land use regulations and make recommendations to
88 the City Commission and the Planning and Architectural Review Board related to updating the
89 land use regulations applicable to exceptions from the height limitation for mechanical and
90 architectural elements.
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92 **SECTION 6. ADMINISTRATIVE RELIEF PROCEDURE.**
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94 (a) The City Commission may authorize exceptions to the moratorium imposed by this
95 Ordinance when it finds, based upon substantial competent evidence presented to it, that deferral
96 of action on an application for permit, development order, or other official action of the City for
97 the duration of the moratorium would impose an extraordinary hardship on a landowner or
98 petitioner.
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100 (b) A request for an exception based upon extraordinary hardship shall be filed with
101 the City Clerk, including a non-refundable fee of \$350.00 by the owner/petitioner, or the petitioner
102 with the consent of the owner/petitioner, to cover processing and advertising costs, and shall
103 include a recitation of the specific facts that are alleged to support the claim of extraordinary
104 hardship.
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106 (c) A public hearing on any request for an exception for extraordinary hardship shall
107 be held by the City Commission at the first regular meeting of the City Commission that occurs
108 after the expiration of the period for publication of notice of the request for an exception.
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110 (d) Notice of filing of a request for an exception, and the date, time, and place of the
111 hearing thereon shall be published once at least 7 days prior to the hearing in a newspaper of
112 general circulation within the city limits of the City of Flagler Beach, Florida.
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114 (e) In reviewing an application for an exception based upon a claim of extraordinary
115 hardship, the City Commission shall consider, at a minimum, the following criteria:
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117 (1) The extent to which the applicant has, prior to the effective date of this
118 Ordinance, received a permit or approval to conduct a use subject to this
119 moratorium.
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121 (2) The extent to which the applicant has, prior to the effective date of this
122 Ordinance, made a substantial expenditure of money or resources in
123 reliance upon a permits or approvals of the City of Flagler Beach directly
124 associated with a use subject to this moratorium.
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126 (3) Whether the moratorium will expose the applicant to substantial monetary
127 liability to third persons; or would leave the applicant completely unable,
128 after a thorough review of alternative solutions, to earn a reasonable
129 investment backed expectation on the real property that is affected by this
130 Ordinance.
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132 (f) At a minimum, the City Commission shall consider the following non-exclusive
133 factors under the criteria set forth in subsection (e) above:
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135 (1) The history of the property;

136 (2) The history of the commercial, business or any use on the property; and
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(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 [REDACTED] DAY OF [REDACTED], 2023.

PASSED AND ADOPTED THIS [REDACTED] DAY OF [REDACTED], 2023.

CITY OF FLAGLER BEACH, FLORIDA
CITY COMMISSION

Suzie Johnston, Mayor

ATTEST:

Penny Overstreet, City Clerk