

**CITY OF BRADENTON BEACH ORDINANCE
NO. 16-471**

AN ORDINANCE OF THE CITY OF BRADENTON BEACH, FLORIDA, RELATING TO A CITIZEN INITIATIVE TO ADOPT A RESIDENTIAL BUILDING MORATORIUM TO BE SUBMITTED TO THE ELECTORS OF THE CITY OF BRADENTON BEACH AT THE NEXT GENERAL ELECTION ON TUESDAY, NOVEMBER 8, 2016; PROVIDING FOR THE BALLOT TITLES, BALLOT QUESTIONS AND TEXT FOR THE PROPOSED MORATORIUM; PROVIDING PROPOSED BALLOT LANGUAGE FOR THE FOLLOWING PROPOSED MORATORIUM ORDINANCE NUMBER 16-464:

AN ORDINANCE BY THE CITY OF BRADENTON BEACH, FLORIDA, ESTABLISHING A SIX MONTH MORATORIUM ON THE ACCEPTANCE, REVIEW AND ISSUANCE OF BUILDING PERMIT APPLICATIONS FOR ALL RESIDENTIAL UNITS IN THE R-1 AND R-2 ZONING DISTRICTS OF BRADENTON BEACH THAT CONTAIN MORE THAN FOUR ROOMS THAT WILL BE OR CAN BE USED FOR BEDROOMS OR SLEEPING AREAS, AND DUPLEXES LIMITED TO TWO ROOMS PER SIDE/LEVEL THAT WILL BE OR CAN BE USED FOR BEDROOMS OR SLEEPING AREAS; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR ESTABLISHMENT OF A MORATORIUM; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE;

PROVIDING FOR A REFERENDUM ELECTION FOR ELECTOR APPROVAL OR REJECTION OF PROPOSED ORDINANCE 16-464; PROVIDING DIRECTION FOR BALLOT LANGUAGE; PROVIDING AUTHORIZATION TO PLACE PROPOSED ORDINANCE 16-464 ONTO THE REFERENDUM BALLOT FOR NOVEMBER 8, 2016; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BRADENTON BEACH, FLORIDA, AS FOLLOWS:

WHEREAS, Article VIII, Section 2 of the Florida Constitution provides that municipalities shall have governmental, corporate and proprietary powers to enable

municipalities to conduct municipal government, perform municipal functions and render municipal services; and

WHEREAS, Chapter 166, Florida Statutes, the “Municipal Home Rule Powers Act,” implements the applicable provisions of the Florida Constitution and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by law and to enact ordinances in furtherance thereof; and

WHEREAS, in 2011, the Florida Legislature passed House Bill 883, (Chapter 2011-119, Laws of Florida), amending Florida Statutes, Section 509.032(b), to provide that “[a] local law, ordinance, or regulations may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use or occupancy. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011”; and

WHEREAS, in 2014, the Florida Legislature passed Senate Bill 356 (Chapter 2014-71, Laws of Florida), amending that same statute to read “[a] local law, ordinance, or regulation may not prohibit vacation rentals, or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011”; and

WHEREAS, the legislative history in Senate Bill 356 provides that:

“The bill permits local governments to create regulation that distinguishes vacation rentals from other residential property. In the past, local government regulations have included noise, parking, registration, and signage requirements for vacation rentals.

The bill does not allow local governments to create regulations that would prohibit vacation rentals or restrict the duration or frequency of vacation rentals. These types of regulation remain preempted to the state.

The grandfather provision in existing law exempting any local law, ordinance, or regulation adopted on or before June 1, 2011, is maintained. Any local law, ordinance, or regulations passed before that date that prohibits or restricts vacation rentals based on the duration or frequency may continue to be enforced.”

WHEREAS, the City Commission has held and/or participated in no less than fourteen (14) public meetings since September 17, 2015 to consider and review the issues related to the rental of residential units and private homes by the homeowners or by an authorized representative for temporary occupancy. After hours of testimony by individuals who want rental regulations, and individuals who opposed further governmental regulations, the City Commission directed staff to prepare an Ordinance that would identify transient uses of residential properties and to create an ordinance with a method to better police those complaints regarding transient impacts on noise, trash,

parking, and safety throughout the entire City. On or about November 5, 2015, the City Commission adopted Ordinance 15-461, the Quality of Life Ordinance.

WHEREAS, again, in December 2015, some members of the public approached the City Commission to discontinue efforts to enforce the Quality of Life Ordinance, and to instead, adopt a building moratorium. The City Commission after taking into careful consideration public comment through multiple public hearings and meetings, had determined that the concerns raised by some of its citizenry were still related to parking, noise, and traffic caused by rental guests, and had therefore, found that it was not in the best interest of the residents of the City to adopt a moratorium for residential dwelling units, but rather, to enforce existing ordinances adopted by the City and to work with the City staff to adopt additional regulations to address the citizen concerns; and

WHEREAS, in March and April 2016, some of the citizenry of the City of Bradenton Beach ("Moratorium Citizenry") initiated proceedings under Article IV, Ordinances, Sections 4, Ordinance Enactment and 5, Process for Initiative or Referendum, in order to seek a building moratorium from the electors of the City at the next available general election. Speaking for the Moratorium Citizenry, Priscilla Von Ahnen, stated that the purpose for the Building Moratorium set forth in proposed Ordinance 16-464, was to allow for a "time out" to explore options to address the problems caused by transient rental. Public comment questioned why the Moratorium Citizenry had not submitted any proposals to date and how an additional "time out" would facilitate a solution. As of the date of the first reading of this Ordinance, there have been over 300 days since the transient rental issue was brought to the City Commission with the initial request for a moratorium. As of the date of the election, there will have been 419 days for the Moratorium Citizenry to propose a solution. If the Referendum for a six month building moratorium is successful, it will have been a total of at least 600 days to create a transient rental solution for noise, parking and traffic; and

WHEREAS, the City Commission has denied the Moratorium Citizenry's request for a moratorium for a number of reasons. First, the State of Florida has expressly preempted municipalities from adopting rental restrictions. Upon adopting rental regulations, a neighboring City has faced a significant number of lawsuits and/or Bert Harris claims on the basis that municipalities are not allowed to regulate rentals. Second, the City Planner and Building Official opined that the proposed "Moratorium Ordinance" was overly broad and unenforceable by City staff. Specifically, the moratorium dictates that any residential unit with four rooms that can be used for sleeping would trigger the regulation. Staff advised that living rooms, offices, dens, etc., could trigger this provision and that it would be challenging to enforce the moratorium. Lastly, the Commission determined that it already had regulations in place that could address the noise, parking and traffic concerns articulated by the Moratorium Citizenry, and, if necessary, the City could amend those regulations for greater control and enforcement; and

WHEREAS, the Moratorium Citizenry has chosen not to withdraw or amend its proposed moratorium ordinance;

WHEREAS, the City Commission has determined that the adoption of this Ordinance is required pursuant to Article IV of the City Charter.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BRADENTON BEACH, FLORIDA, AS FOLLOWS:

Section 1. Findings of Fact. The WHEREAS clauses set forth above are adopted herein as findings of fact.

Section 2. The City Commission of the City of Bradenton Beach, Florida, is required by Article IV of its Charter to adopt this Ordinance in order to submit the Moratorium Citizenry's Proposed Moratorium Ordinance 16-464 to the electorate of the City of Bradenton Beach at the November 8, 2016 election.

Section 2. Ordinance 16-464, which is to be presented to the electorate at the November 8, 2016 election in abbreviated form includes: a ballot title, a ballot question, and a ballot summary in substantially the following form: **SEE EXHIBIT A - ATTACHED HERETO AND INCORPORATED HEREIN.**

Section 3. Attached hereto and incorporated herein is Exhibit "B". Exhibit "B" contains Ordinance 16-464. This Ordinance 16-471 and the proposed Ordinance 16-464, shall be mailed to each member of the City of Bradenton Beach electorate in a timely fashion prior to the November 8, 2016 Election.

Section 4. The Building Moratorium as proposed in Ordinance 16-464 (Exhibit "A") shall become effective for six (6) months if the Ballot Referendum for a Building Moratorium is approved by a "yes" vote of a majority of those duly qualified electors voting on the referendum question posed at the November 8, 2016 General Election, and shall be incorporated into and become a part of the City of Bradenton Code of Ordinances as the result of approval of Ordinance 16-464 by the electorate. If a

majority of those voting shall not vote "yes" to an amendment proposed in Exhibit "A", such proposed Ordinance 16-464 shall not be adopted and said proposed Ordinance 16-464 and its provisions shall be of no force or effect.

Section 5. The proposed Ordinance 16-464 (Exhibit A) shall be presented to the qualified City of Bradenton Beach electorate by placing the question of whether to adopt same on the Ballot at the General Election to be conducted on November 8, 2016.

Section 6. The question on the ballot for the proposed amendments shall be substantially in the following form: **SEE EXHIBIT A – ATTACHED HERETO.**

Section 7. The City Commission, of the City of Bradenton Beach, Florida is hereby authorized to adopt all Resolutions and staff is authorized to coordinate with the Supervisor of Elections to take all actions necessary in order to ensure that proposed Ordinance 16-464 is properly placed on the General Election Ballot to be held on November 8, 2016. This Referendum shall be conducted according to the requirements of law governing General Elections in the State of Florida.

Section 8. **SEVERABILITY.** If any section, paragraph, provision or term of this Ordinance, or any portion thereof, including Exhibits "A" and "B" (attached hereto), shall be determined by a Court of competent jurisdiction to be invalid, such decision shall not otherwise affect the validity of the remaining portions of this Ordinance, including Exhibits "A" and "B" (attached hereto), that were not declared to be invalid.

Section 9. **EFFECTIVE DATE.** This Ordinance shall become effective upon adoption, or as provided by law, but shall be of no further force or effect if the proposed Ordinance 16-464 (Exhibit A attached hereto) is not approved by the

electorate at the November 8, 2016 Election.

PASSED AND DULY ADOPTED, with a quorum present and voting, this 4 day of August, 2016.

First Reading: July 21, 2016

Second Reading: August 4, 2016

CITY OF BRADENTON BEACH, FLORIDA, BY AND THROUGH THE CITY
COMMISSION OF THE CITY OF BRADENTON BEACH

By: William Shearon
William Shearon, Mayor

ATTEST: Terri Sanclemente, City Clerk

By: Terri Sanclemente
Clerk/Deputy Clerk

EXHIBIT A

Exhibit to Proposed Ordinance 16-464

- BALLOT 1-

Title

ADOPTION OF RESIDENTIAL BUILDING MORATORIUM ORDINANCE

Summary

Shall Ordinance No. 16-464, which provides for a six (6) month Moratorium on the acceptance, review, and issuance of building permit applications for all residential units in the R1 and R2 zoning districts of the City, that will contain more than four (4) rooms that will be or can be used for bedrooms or sleeping areas, and duplexes limited to two bedrooms or sleeping areas per side/level, be enacted?

Yes, For Approval _____

No, For Rejection _____

EXHIBIT B

Exhibit to Proposed Ordinance 16-464

-BALLOT #-1

Title

ADOPTION OF RESIDENTIAL BUILDING MORATORIUM ORDINANCE

Summary

Shall Ordinance Number 16-464, which provides for a six (6) month Moratorium on the acceptance, review, and issuance of building permit applications for all residential units in the R1 and R2 zoning districts of the City, that will contain more than four (4) rooms that will be or can be used for bedrooms or sleeping areas, and duplexes limited to two bedrooms or sleeping areas per side/level, be enacted?

Yes, For Approval _____

No, For Rejection _____

PROPOSED ORDINANCE NO. 16-464

AN ORDINANCE BY THE CITY OF BRADENTON BEACH, FLORIDA, ESTABLISHING A SIX MONTH MORATORIUM ON THE ACCEPTANCE, REVIEW AND ISSUANCE OF BUILDING PERMIT APPLICATIONS FOR ALL RESIDENTIAL UNITS IN THE R-1 AND R-2 ZONING DISTRICTS OF BRADENTON BEACH THAT CONTAIN MORE THAN FOUR ROOMS THAT WILL BE OR CAN BE USED FOR BEDROOMS OR SLEEPING AREAS, AND DUPLEXES LIMITED TO TWO ROOMS PER SIDE/LEVEL THAT WILL BE OR CAN BE USED FOR BEDROOMS OR SLEEPING AREAS; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR ESTABLISHMENT OF A MORATORIUM; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Bradenton Beach is located on Anna Maria Island in Manatee County, Florida; and

WHEREAS, the City's Comprehensive Plan states that cities are about people and the quality of their lives. Past and present growth trends are critical to the development of responsive growth management policies and

WHEREAS, Policy 1.1.6 of the City's Comprehensive Plan requires that residential development shall be designed to protect life and property from natural and man-made hazards such as flooding, excessive traffic, subsidence, noxious odors and noise; and

WHEREAS, Policy 1.1.7 of the City's Comprehensive Plan requires that residential land uses shall be encouraged in a manner which is compatible with the type and scale of surrounding land use densities consistent with its policies; and

WHEREAS, Goal One of the Future Land Use Element of the City's Comprehensive Plan requires that the City of Bradenton Beach maintain and protect the residential/family character of the City while maximizing the enjoyment of natural and man-made resources by residents and visitors alike and minimizing the threat to health safety, and welfare posed by hazards, nuisances, incompatible land uses, and environmental degradation; and

WHEREAS, the City Electors of the City of Bradenton Beach recognize that the nature of the community is shifting away from owner-occupied residential units to units intended for other than owner-occupied; and

WHEREAS, in the last decade, the number of homesteaded properties in the City has significantly decreased; and

WHEREAS, the trend is construction of large houses containing a large number of bedrooms and rooms that are or can be used as bedrooms and sleeping areas; and

WHEREAS, houses with a large number of bedrooms and sleeping areas impacts the traditional existing residential neighborhoods; and

WHEREAS, the Electors of the City of Bradenton Beach deem protection of its residential neighborhoods and the residential character of the City as paramount; and

WHEREAS, the Electors of the City of Bradenton Beach are encouraging the adoption of amendments to its land use and other building regulations to further protect its existing residential neighborhoods and the residential character of the City; and

WHEREAS, the Electors of the City of Bradenton Beach deem it important that it set aside sufficient time to consider testimony and evidence necessary to formulate new policies, regulations, and ordinances addressing the issues facing the City; and

WHEREAS, the Electors of the City of Bradenton Beach deem it important and necessary to have a moratorium on building permits for certain types of construction in the R-1, and R-2 zoning districts while it considers appropriate and necessary changes to its policies, regulations, and ordinances; and

WHEREAS, the Electors of the City of Bradenton Beach find that the need to consider and adopt additional regulations and ordinances to address the matters related herein constitutes unusual circumstances as that term is used in Section 553.79, Florida Statutes

and that accordingly, the City may hold pending building permit applications for more than thirty (30) business days; and

WHEREAS, the Electors of the City of Bradenton Beach recognize how important housing and real property is to its citizens and residents and how important it is to balance the competing interests of those who live and own property in the City with the interests of those who desire to live and own property in the City; and

WHEREAS, the City has previously heard complaints from City residents related to the decrease of owner-occupied housing and the diminishing residential character of the City in earlier Bradenton Beach City Commission meetings; and

WHEREAS, the Electors of the City of Bradenton Beach desire to review whether the City's existing and future regulations and ordinances will successfully address the issues faced by the City; and

WHEREAS, balancing competing interests, especially in light of the complex web of laws that effect these decisions takes time; and

WHEREAS, a moratorium as set forth herein creates the time needed to receive information, weigh all factors and craft appropriate policies; and

WHEREAS, the Electors of the City of Bradenton Beach desire to hear from as many affected persons who are willing to offer their comments to the City Commission as is practicable; and

WHEREAS, a moratorium is otherwise in the best interests of the City, its residents and citizens and is otherwise in the best interest of the public's health, safety and welfare;

NOW, THEREFORE, BE IT ORDAINED BY THE ELECTORS OF THE CITY OF BRADENTON BEACH, FLORIDA AS FOLLOWS:

SECTION ONE. Findings of Fact. The above "whereas" clauses are deemed findings of fact and are adopted herein.

SECTION TWO. Enactment of a Moratorium.

(a) The City of Bradenton Beach hereby establishes a moratorium on the acceptance, processing and issuance of applications for building permits for residential units that contain or will result in the creation of more than four (4) rooms that will be or can be used for bedrooms or sleeping areas, and duplexes limited to two (2) bedrooms or sleeping areas per side/level.. This moratorium is effective towards both construction of new residential units and the remodeling or expansion of existing residential units in the

R-1 and R-2 zoning districts. This moratorium affects all applications received by the City after the date of passage of this Ordinance. All building permits which had been issued by the City prior to that date are unaffected by the moratorium.

(b) For purposes of this moratorium, the phrase "rooms that will be or can be used for bedrooms or sleeping areas" includes rooms designated on building plans as bedrooms (which are rooms primarily used for sleeping, are no less than 70 square feet, contain a window in a wall, have a closet, and have a door to physically separate the room from primary living area) or sleeping areas or rooms which can be converted to bedrooms or sleeping areas by simple means such as replacing furniture. Rooms which have a designated purpose and which cannot be converted to bedrooms or sleeping areas without an additional building permit, such as kitchens and bathrooms, are not counted as bedrooms or sleeping areas.

(c) Building permit applications for residential units in the R-1 and R-2 zoning districts containing or resulting in four or fewer rooms that can or will be used for bedrooms or sleeping areas and duplexes resulting in two or less rooms per side/level that can or will be used for bedrooms or sleeping areas are unaffected by this moratorium and will be processed by the City in the normal course of business.

Section 3. Duration. Subject to need, this moratorium shall remain in effect for six (6) months from the date of passage of this ordinance.

Section 4. Repeal of Ordinances in Conflict. All ordinances in direct conflict with this ordinance are hereby repealed to the extent of such conflict.


Section 5. Severability. If any word, portion, clause or other part of this ordinance is deemed unconstitutional or unenforceable for any reason, such portion shall be severed from this ordinance and the remaining portions thereof shall be unaffected thereby.

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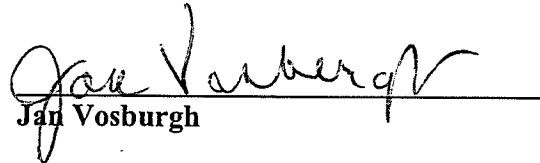
Section 6. Effective Date. The effective date of this ordinance shall be the date of passage of this ordinance by adoption by the City Commission of the City of Bradenton Beach or by passage of this ordinance in a general election, November 8, 2016.

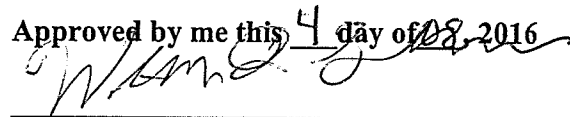
PASSED AND ADOPTED by the City Commission of the City of Bradenton Beach.



Jacob Spooner


Edward Straight


Ralph Cole


Jan Vosburgh

Approved by me this 4 day of 08, 2016

William Shearon, Mayor

ATTEST: 
Terri Sanclemente, City Clerk