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ORDINANCE NO. 74-22

AN ORDINANCE OF THE CITY OF NEW SMYRNA BEACH ADOPTING A TEMPORARY MORATORIUM ON THE CONSIDERATION OF ANY APPLICATIONS FOR REZONINGS, MAJOR AMENDMENTS TO A MASTER DEVELOPMENT AGREEMENT, SITE PLAN APPROVALS, PLAT APPROVALS, OR VARIANCES, FOR CONTIGUOUS PROPERTY 10 ACRES IN SIZE OR LARGER PROPOSED FOR RESIDENTIAL DEVELOPMENT LOCATED IN FEMA FLOOD ZONES A OR AE IN THE CITY OF NEW SMYRNA BEACH, FOR A PERIOD ENDING NO LATER THAN JUNE 27, 2023, UNLESS RESCINDED OR EXTENDED BY A SUBSEQUENT ORDINANCE, OR BY SUBSEQUENT AMENDMENT TO THE CITY'S LAND DEVELOPMENT REGULATIONS OR CODE OF ORDINANCES REGARDING THE REGULATION OR DESIGN OF STORMWATER OR FLOODPLAIN MANAGEMENT; PROVIDING PROCEDURES FOR VESTED RIGHTS REVIEW FOR THE SPECIFIC MATTERS ADDRESSED HEREIN; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Hurricane Ian made landfall on the west coast of Florida as a category 4 storm on September 28, 2022 and made its way across the state of Florida and traveled up the east coast causing wide-spread flooding along the way; and

WHEREAS, the City of New Smyrna Beach experienced 21 inches of rainfall in less than 24 hours and had at least four feet of storm surge in the Turnbull Bay, Turnbull Creek, and the Indian River; and

WHEREAS, approximately 850 homes flooded in New Smyrna Beach and 215 residents were rescued by high-water rescue vehicles; and

WHEREAS, residents have suffered catastrophic damage to their homes and property and the City is diligently seeking answers as to why the flooding occurred and whether the existing stormwater and floodplain regulations are sufficient;

WHEREAS, the City has hired an expert to help the City understand what happened and to review the regulations to determine if they should be changed to better protect residents in the future from similar or worse storms; and

WHEREAS, while the expert is conducting his review of the City's regulations and data, the City Commission seeks to declare a temporary moratorium on large-scale residential development in FEMA flood zones A and AE until the City has answers on

47 why the flooding occurred and whether the City's regulations are appropriate in order to
48 prevent further wide-spread damage and destruction in the future; and
49

50 **WHEREAS**, based upon the expert's timeline and the time it would take for the
51 City to review the information to be provided by the expert and move through any
52 approval process for amendments to the stormwater management and drainage or
53 floodplain management regulations, the City Commission has determined that this
54 temporary moratorium should be in place until the earlier of June 27, 2023, or until
55 rescinded or extended by a subsequent ordinance; and
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57 **WHEREAS**, the temporary moratorium was considered by the Planning and
58 Zoning Board on November 7, 2022, and the Board recommended approval by a vote of 5
59 to 0; and
60

61 **WHEREAS**, the City Commission feels it is in the best interests of the public
62 health, safety, and welfare of the citizens of the City of New Smyrna Beach to adopt the
63 temporary moratorium as more particularly set forth hereinafter.
64

65 **NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF**
66 **THE CITY OF NEW SMYRNA BEACH, FLORIDA:**
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68 **SECTION 1: Recitals Adopted.** Each of the above stated recitals is hereby adopted and
69 confirmed as being true, and the same are hereby made a specific part of the Ordinance.
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71 **SECTION 2: Moratorium Imposed.** A temporary moratorium, until no later than June
72 27, 2023, is hereby imposed on the consideration of any applications for rezonings, major
73 amendments to a Master Development Agreement, site plan approvals, plat approvals, or
74 variances for contiguous property 10 acres in size or larger proposed for residential
75 development located in FEMA flood zones A or AE in the City of New Smyrna Beach to
76 provide time for the City to review the impacts of Hurricane Ian and determine if updates
77 to the City's stormwater management and drainage regulations are appropriate. While the
78 temporary moratorium is in effect, the City shall not accept, process or approve any of the
79 aforementioned applications except those that have already have been reviewed by the
80 Planning and Zoning Board prior to the effective date of this ordinance.
81

82 **SECTION 3: Determination of Vested Rights or Denial of All Economic Use.**

83 (A) Nothing in this ordinance shall be construed or applied to abrogate the vested right of
84 a property owner to complete development of a parcel where the property owner can
85 demonstrate by substantial competent evidence each of the following:

86 1. A governmental act of development approval was obtained prior to the effective
87 date of this ordinance; and

88 2. Upon which the property owner has detrimentally relied, in good faith, by
89 making substantial expenditures; and

90 3. That it would be highly inequitable to deny the property owner the right to
91 complete the development.

92 (B) Any property owner claiming vested rights under this Section 2 must file an
93 application with the Interim Development Services Director for a determination within 30
94 days after the effective date of this ordinance. The application shall contain a sworn
95 statement as to the basis upon which the vested rights are asserted, together with
96 documentary evidence supporting the claim. The Interim Development Services Director
97 shall review the evidenced submitted and make a determination as to whether the
98 property owner has established vested rights for the parcel based upon competent
99 substantial evidence. The property owner may appeal the Interim Development Service
100 Director's determination pursuant to the appeal procedure set forth in Article III, Sec.
101 301.05, LDR.

102
103 **SECTION 4: Exhaustion of Administrative Remedies.** No property owner claiming that
104 this ordinance, as applied, constitutes or would constitute an abrogation of vested rights
105 may pursue such a claim in court, unless he or she has first exhausted the applicable
106 administrative remedies provided in Section 2 of this ordinance.

107
108 **SECTION 5: Conflicts.** In the event that the provisions of this ordinance are in conflict
109 with any other ordinance, then the provisions of this ordinance shall prevail.

110 **SECTION 6: Severability.** If any section, subsection, sentence, clause, phrase, provision,
111 or word of this Ordinance is held to be invalid or unconstitutional by a court of competent
112 jurisdiction, then such invalidity or unconstitutionality shall not be held to invalidate or
113 impair the validity, force, or effect of any other remaining provisions of this Ordinance.

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115 **SECTION 7: Effective Date.** This ordinance shall become effective immediately upon its
116 adoption. The temporary moratorium enacted by this ordinance shall terminate no later
117 than June 27, 2023, unless rescinded or extended by subsequent ordinance or by an
118 amendment to the City's Land Development Regulations and/or Code of Ordinances
119 addressing regulation of stormwater management and drainage or floodplain management.

120
121 **APPROVED AS TO FORM AND CORRECTNESS:**

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123 
124 _____
125 **CARRIE AVALLONE**
126 **City Attorney**

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129 **DATE:** 12/7/2022
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