

ORDINANCE NO. 2022-09

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA AMENDING THE CITY OF NORTH MIAMI BEACH COMPREHENSIVE PLAN TO ADD A PROPERTY RIGHTS ELEMENT AS REQUIRED BY AND IN CONFORMITY WITH SECTION 163.3177(6)(i), FLORIDA STATUTES (2021); PROVIDING FOR INCLUSION IN THE CITY OF NORTH MIAMI BEACH COMPREHENSIVE PLAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions including those relating to Comprehensive Planning, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, on July 1, 2021, CS/CS/CS/HB 59 was signed into law by the Governor (the “Law”) and provides, among other things, for a new requirement in Section 163.3177(6), Florida Statutes (2021), that each local government include in its comprehensive plan a “property rights element to ensure that private property rights are considered in local decision-making”; and

WHEREAS, the Law provides that local governments “must adopt a property rights element in its comprehensive plan by the earlier of the date of its adoption of its next proposed plan amendment that is initiated after July 1, 2021, or the date of the next scheduled evaluation and appraisal of its comprehensive plan pursuant to s. 163.3191”; and

WHEREAS, the City of North Miami Beach does not currently have a property rights element in its comprehensive plan; and

WHEREAS, the Mayor and City Commission desire to comply with state law and adopt a new property rights element in the form prescribed by the new Law; and

WHEREAS, Chapter 163, Florida Statutes, provides for the process by which a City's Comprehensive Plan may be amended; and

WHEREAS, notice was publicly advertised as required by City of North Miami Beach regulations regarding text amendments to the Comprehensive Plan; and

WHEREAS, on July 11, 2022, the Planning & Zoning Board, as the local planning agency for the City of North Miami Beach, held its hearing on this proposed Ordinance with due public notice and input, and recommended its adoption; and

WHEREAS, on September 21, 2022, the Mayor and City Commission held its first reading and public hearing of this proposed Ordinance; and

WHEREAS, on December 20, 2022, the Mayor and City Commission held a second reading and public hearing of this proposed Ordinance with due public notice and input; and

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Commission of the City of North Miami Beach, Florida:

Section 1. That the recitals and findings contained in the forgoing “whereas” clauses are adopted by reference and incorporated as if fully set forth in this section.

Section 2. Amending the City of North Miami Beach Comprehensive Plan.

The City of North Miami Beach, Florida, Comprehensive Plan is hereby amended to add a Property Rights Element, pursuant to Section 163.3177(6)(i), Florida Statutes (2021), as follows:

PROPERTY RIGHTS ELEMENT

GOAL

CONSIDER THE RIGHTS OF PROPERTY OWNERS IN ALL LOCAL DECISION-MAKING.

OBJECTIVE AND POLICIES

Objective 1: Apply rules, ordinances, and regulations with sensitivity for private property rights.

Policy 1.1: In local decision-making, the City of North Miami Beach shall consider the right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.

Policy 1.2: In local decision-making, the City of North Miami Beach shall consider the right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.

Policy 1.3: In local decision-making, the City of North Miami Beach shall consider the right of the property owner to privacy and to exclude others from the property to protect the owner’s possessions and property.

Policy 1.4: In local decision-making, the City of North Miami Beach shall consider the right of a property owner to dispose of his or her property through sale or gift.

Section 3. **Inclusion in the Comprehensive Plan.** The City of North Miami Beach Mayor and City Commission intend that the provisions of this Ordinance be made a part of the North Miami Beach Comprehensive Plan, and that sections therein may be renumbered accordingly.

Section 4. **Conflicts.** Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 5. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 6. Effective Date. Pursuant to Florida Law, the Comprehensive Plan amendment(s) adopted by this Ordinance shall not become effective until 31 days after the state land planning agency notifies the local government that the plan amendment package is complete. If timely challenged, an amendment does not become effective until the state land planning agency or the Administration Commission enters a final order determining the adopted amendment to be in compliance.

APPROVED on this first reading this 21 day of September 2022.

APPROVED AND ADOPTED on second reading this ___ day of _____, 2023.

ATTEST:

ANDRISE BERNARD, MMC
CITY CLERK

ANTHONY F. DEFILLIPO
MAYOR

(CITY SEAL)

APPROVED AS TO FORM, LANGUAGE
AND FOR EXECUTION

HANS OTTINOT
CITY ATTORNEY