



ORDINANCE # 2022-07

AN ORDINANCE OF THE CITY OF WEST MIAMI, FLORIDA AMENDING THE CITY OF WEST MIAMI COMPREHENSIVE PLAN PROVIDING FOR THE ENACTMENT OF A PROPERTY RIGHTS ELEMENT WITH GOALS, OBJECTIVES AND POLICIES; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of West Miami has enacted its Comprehensive Plan in accordance with the controlling provisions of State law which Comprehensive Plan has successfully guided the City for many years; and

WHEREAS, the City of West Miami is committed to an ongoing and vibrant comprehensive planning program which addresses the needs of the citizens of the City; and

WHEREAS, Section 163.3167, Florida Statutes, part of Florida's Community Planning Act, requires the City of West Miami to maintain a comprehensive plan to guide its future development and growth; and

WHEREAS, the provisions of Section 163.3184, Florida Statutes, relate to the process for the enactment of Comprehensive Plan amendments; and

WHEREAS, Florida's Community Planning Act was amended during the 2021 Legislative Session by the passage of Committee Substitute for House Bill Number 59 (initially codified as Chapter Number 2021-195, Laws of Florida) to require every city and county within the State "to include in its comprehensive plan a **property rights element**." (Section 163.3177(6)(i)1, Florida Statutes); and

WHEREAS, Section 187.201(14), Florida Statutes, (part of the State Comprehensive Plan) provides as follows:

(14) PROPERTY RIGHTS.

- (a) Goal. Florida shall protect private property rights and recognize the existence of legitimate and often competing public and private interests in land use regulations and other government action.
- (b) Policies.

(b) Policies.

1. Provide compensation, or other appropriate relief as provided by law, to a landowner for any governmental action that is determined to be an unreasonable exercise of the state's police power so as to constitute a taking.
2. Determine compensation or other relief by judicial proceeding rather than by administrative proceeding.
3. Encourage acquisition of lands by state or local government in cases where regulation will severely limit practical use of real property.

WHEREAS, Section 70.001 (1), *Florida Statutes*, from the *Bert J. Harris, Jr., Private Property Rights Protection Act* states, in part, as follows:

The Legislature recognizes that some laws, regulations, and ordinances of the state and political entities in the state, as applied, may inordinately burden, restrict, or limit private property rights without amounting to a taking under the State Constitution or the United States Constitution. The Legislature determines that there is an important state interest in protecting the interests of private property owners from such inordinate burdens. Therefore, it is the intent of the Legislature that, as a separate and distinct cause of action from the law of takings, the Legislature herein provides for relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity in the state, as applied, unfairly affects real property.

WHEREAS, Section 163.3161 (10), *Florida Statutes*, from the intent and purpose section of the *Community Planning Act* provides as follows:

It is the intent of the Legislature that all governmental entities in this state recognize and respect judicially acknowledged or constitutionally protected private property rights. It is the intent of the Legislature that all rules, ordinances, regulations, comprehensive plans and amendments thereto, and programs adopted under the authority of this act must be developed, promulgated, implemented, and applied with sensitivity for private property rights and not be unduly restrictive, and property owners must be free from actions by others which would harm their property or which would constitute an inordinate burden on property rights as those terms are defined in s.70.001(3)(e) and (f). Full and just compensation or other appropriate relief must be provided to any property owner for a governmental action that is determined to be an invalid exercise of the police power which constitutes a taking, as provided by law. Any such relief must ultimately be determined in a judicial action.

WHEREAS, Section 70.002, *Florida Statutes*, is entitled "Property Owner Bill of Rights" and requires as follows:

Each county property appraiser office shall provide on its website a Property Owner Bill of Rights. The purpose of the bill of rights is to identify certain existing rights afforded to property owners but is not a comprehensive guide. The Property Owner Bill of Rights does not create a civil cause of action. The Property Owner Bill of Rights must state:

PROPERTY OWNER

BILL OF RIGHTS

This Bill of Rights does not represent all of your rights under Florida law regarding your property and should not be viewed as a comprehensive guide to property rights. This document does not create a civil cause of action and neither expands nor limits any rights or remedies provided under any other law. This document does not replace the need to seek legal advice in matters relating to property law. Laws relating to your rights are found in the State Constitution, Florida Statutes, local ordinances, and court decisions. Your rights and protections include:

1. The right to acquire, possess, and protect your property.
2. The right to use and enjoy your property.
3. The right to exclude others from your property.
4. The right to dispose of your property.
5. The right to due process.
6. The right to just compensation for property taken for a public purpose.
7. The right to relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity unfairly affects your property.

WHEREAS, the City of West Miami is committed to open and transparent decision-making which is the best protection for property rights and has long advocated for the rights of all people to contribute to City planning in that engaged citizens improve their neighborhoods and the City as a whole; and

WHEREAS, the high quality of life of the citizens of the City of West Miami is enhanced and protected, the high quality economic and natural environment of the City is protected and the City, as a whole, is strengthened when City planning practices and procedures engage the public as public participation leads to more thoughtful and enduring planning; and

WHEREAS, the City of West Miami respects judicially acknowledged and constitutionally protected private property rights; and

WHEREAS, the pertinent goals, objectives and policies of the Comprehensive Plan support the approval of the amendment set forth in this Ordinance as well as the controlling provisions of State law; and

WHEREAS, the City of West Miami has complied with all requirements and procedures of Florida law in processing this amendment to the City of West Miami

Comprehensive Plan including, but not limited to, Section 163.3184, Florida Statutes, as well as other controlling law; and

WHEREAS, the City Commission of the City of West Miami has the power and authority to enact this Ordinance under the controlling provisions of State law such as, by way of example only, the provisions of Article VIII, Section 2 of the Constitution of the State of Florida and the provisions of Chapter 163 and Chapter 166, Florida Statutes, and the controlling case law of the State of Florida; and

WHEREAS, the City Commission of the City of West Miami is enacting this Ordinance in order to protect the public health, safety and welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COMMISSION OF THE CITY OF WEST MIAMI THAT:

Section 1. Recitals. The above recitals are true, correct and incorporated herein by this reference.

Section 2. Legislative Findings and intent

- (a). The City Commission of the City of West Miami hereby adopts and incorporates into this Ordinance the recitals (whereas clauses) to this Ordinance as well as City Commission agenda memorandum relating to this Ordinance as the legislative findings of the City Commission.
- (b). This Ordinance is internally consistent with the goals, objectives and policies of the *Comprehensive Plan of the City of West Miami*.
- (c). City staff has concluded that the amendment to the City's *Comprehensive Plan* as set forth in this Ordinance are well founded and consistent with sound and generally accepted practices and principles.

Section 3. New Property Rights Element; City Comprehensive Plan. A new Property Rights Element of the Comprehensive Plan of the City of West Miami is created and as provided in Exhibit A.

Section 4. Amendment to the Comprehensive Master Plan. In accordance with Section 163.3184, Florida Statutes, after the initial public hearing the local government shall transmit a copy of the proposed amendment(s) to the state land planning agency, and any other person or entity requesting a copy.

Section 5. Effective Date. In accordance with the requirements of Section 163.3184, Florida Statutes, this ordinance shall become effect thirty-one (31) days after adoption. However, if challenged within thirty (30) days after adoption, this ordinance shall not become effective until the State land planning agency issues a final order determining this ordinance is in compliance.

Section 6. Conflicts. Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted Ordinance or Statute, the most restrictive shall apply.

Section 6. Severability. If any one of the provisions of this ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly

prohibited, or against public policy, or shall for any reason whatsoever be held as invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and shall in no way affect the validity of all other provisions of this ordinance.

PASSED AND ADOPTED this 21st day of September 2022.

APPROVED:

ERIC DIAZ-PADRON, MAYOR

ATTEST:

ANNERY GONZALEZ, MMC
CITY CLERK

APPROVED AS TO FORM AND SUFFICIENCY:

JOSE A. VILLALOBOS, CITY ATTORNEY

ROLL CALL VOTE:

This Ordinance was offered by Commissioner Blanca, who moved its adoption. The motion was seconded by Commissioner Suarez. The vote was as follows:

MAYOR ERIC DIAZ-PADRON	<u>Y</u>
VICE-MAYOR JUAN BLANES	<u>Y</u>
COMMISSIONER CANDIDA BLANCA	<u>Y</u>
COMMISSIONER IVAN CHAVEZ, JR.	<u>Y</u>
COMMISSIONER LUCIANO L. SUAREZ	<u>Y</u>

<p>Date of 1st Publication: <u>August 26th, 2022</u> Date of 1st Reading; First Public Hearing: <u>September 6th, 2022</u> Date of 2nd Publication: <u>September 9th, 2022</u> Date of 2nd Reading; 2nd Public Hearing: <u>September 21st, 2022</u></p>

Exhibit A

PROPERTY RIGHTS ELEMENT GOALS OBJECTIVES, AND POLICIES

GOAL:

The City of West Miami shall make planning and development decisions with respect for private property rights and with respect for people's rights to participate in decisions that affect their lives and property.

OBJECTIVE 1:

The City of West Miami shall respect judicially acknowledged and constitutionally protected private property rights.

Policy 1.1

The City of West Miami shall consider in its decision-making the right of a property owner to physically possess and control his, her or its interests in the property including, but not limited to, rights arising from easements, leases, or mineral rights.

Policy 1.2:

The City of West Miami shall consider in its decision-making the right of a property owner to use, maintain, develop and improve his, her or its property for personal use or for the use of any other person, subject to state law and local ordinances.

Policy 1.3:

The City of West Miami shall consider in its decision-making 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:

The City of West Miami shall consider in its decision-making the right of a property owner to dispose of his, her or its property through sale or gift.

Policy 1.5:

The City of West Miami shall adhere to the rule of law in making land use decisions whether legislative, administrative or quasi-judicial.

Policy 1.6:

The City's land development regulations shall provide for applicable processes, procedures and standards to implement this Objective.

OBJECTIVE 2:

People have the right to participate in planning and development decisions that affect their lives and property. The City of West Miami's decision-making processes and procedures shall be transparent so that all people may reasonably participate in decisions that affect their lives and property.

Policy 2.1:

The City of West Miami recognizes that planning and development decisions affect complex systems and have impacts that occur beyond the site of development. Any affected person may participate, as is consistent with controlling law, in and be a party to a hearing on a land use decision. Likewise, the general public which may not have true legal standing under controlling law, shall have the right to participate as is established under Florida law.

Policy 2.2:

The City of West Miami recognizes that it should make planning and development decisions in response to true and accurate information. The City of West Miami shall, in accordance with controlling law, provide every affected person an opportunity to be heard, to present and rebut evidence and to be informed of all information on which the City bases its decision all as is required under Florida law.

Policy 2.3:

The City of West Miami recognizes that a person cannot participate in decisions about which they are unaware. The City shall provide notice as required by controlling law and shall adhere to a policy of open meetings and freedom to review and copy public records which are bedrock principles of Florida law.

Policy 2.4:

The City of West Miami recognizes that planning and development decisions raise issues which the City may not be capable of adequately addressing in a single hearing and that the best decisions when every affected person has the opportunity to participate early and throughout the decision-making process.

Policy 2.5:

The City's land development regulations shall provide for applicable processes, procedures and standards to implement this Objective.

OBJECTIVE 3:

People rely on the land use designations assigned to real property under the provisions of the City's *Comprehensive Plan* and on the zoning districts or classifications assigned to properties when deciding how to use property. The City of West Miami's decision-making processes shall be reliable and predictable to promote sound, long-term investments in the community.

Policy 3.1:

The City of West Miami shall respect the right of people, including elected and appointed officials, citizens, and property owners, to fairly evaluate proposed decisions relating to real property.

Policy 3.2:

The decision-making processes of the City shall ensure that public meetings and public hearings afford the right to participation by the public as a general matter and afford administrative due process with regard to matters that are decided in the course of quasi-judicial hearing processes and procedures.

Policy 3.3:

The City's land development regulations shall provide for applicable processes, procedures and standards to implement this Objective.

MIAMI-DADE

**STATE OF FLORIDA
COUNTY OF MIAMI-DADE:**

Before the undersigned authority personally appeared GUILLERMO GARCIA, who on oath says that he or she is the DIRECTOR OF OPERATIONS, Legal Notices of the Miami Daily Business Review f/k/a Miami Review, a daily (except Saturday, Sunday and Legal Holidays) newspaper, published at Miami in Miami-Dade County, Florida; that the attached copy of advertisement, being a Legal Advertisement of Notice in the matter of

CITY OF WEST MIAMI - PUBLIC HEARING - SEPT. 6TH, 2022

in the XXXX Court,
was published in said newspaper by print in the issues of
and/or by publication on the newspaper's website, if
authorized, on

08/26/2022

Affiant further says that the newspaper complies with all legal requirements for publication in chapter 50, Florida Statutes.

Guillermo Garcia

Sworn to and subscribed before me this
26 day of AUGUST, A.D. 2022

C. Ramo

(SEAL)
GUILLERMO GARCIA personally known to me



**CITY OF WEST MIAMI
NOTICE OF PUBLIC HEARING**

The City of West Miami proposes to adopt the following Ordinance:

AN ORDINANCE OF THE CITY OF WEST MIAMI, FLORIDA AMENDING THE CITY OF CITY OF WEST MIAMI COMPREHENSIVE PLAN PROVIDING FOR THE ENACTMENT OF A PROPERTY RIGHTS ELEMENT WITH GOALS, OBJECTIVES AND POLICIES; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

A First Public Hearing and First Reading of the Ordinance will be held on **Tuesday, September 6th, 2022 at 6:00 p.m.** at the City of West Miami Commission Chambers, 2nd Floor, 901 SW 62nd Avenue, West Miami, Florida.

* Any person, or persons, wishing to appeal any decision made by the City Commission with respect to any matter considered at this meeting or hearing, will require a verbatim record of the proceeding upon which the appeal is based. Interested persons should, therefore, take the necessary steps to ensure that a verbatim record of the proceedings is made which contains the testimony and evidence upon which the appeal is based. (F.S.286.0105)

* Any person requiring special accommodations for participation in the meeting should contact the City Clerk at 305 266-1122, with requests for auxiliary aids or services at least two business days before the meeting.

**ANNERY GONZALEZ, MMC
CITY CLERK
8/26**

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MIAMI-DADE

**STATE OF FLORIDA
COUNTY OF MIAMI-DADE:**

Before the undersigned authority personally appeared GUILLERMO GARCIA, who on oath says that he or she is the DIRECTOR OF OPERATIONS, Legal Notices of the Miami Daily Business Review f/k/a Miami Review, a daily (except Saturday, Sunday and Legal Holidays) newspaper, published at Miami in Miami-Dade County, Florida; that the attached copy of advertisement, being a Legal Advertisement of Notice in the matter of

CITY OF WEST MIAMI - PUBLIC HEARING - SEPT. 21ST, 2022

in the XXXX Court, was published in said newspaper by print in the issues of and/or by publication on the newspaper's website, if authorized, on

09/09/2022

Affiant further says that the newspaper complies with all legal requirements for publication in chapter 50, Florida Statutes



Sworn to and subscribed before me this 9 day of SEPTEMBER, A.D. 2022



(SEAL)
GUILLERMO GARCIA personally known to me



**CITY OF WEST MIAMI
NOTICE OF PUBLIC HEARING**

The City of West Miami proposes to adopt the following Ordinance:

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A Second Reading and Second Public Hearing of the Ordinance will be held on **Wednesday, September 21st, 2022 at 7:30 p.m.** at the City of West Miami Commission Chambers, 2nd Floor, 901 SW 62nd Avenue, West Miami, Florida.

* Any person, or persons, wishing to appeal any decision made by the City Commission with respect to any matter considered at this meeting or hearing, will require a verbatim record of the proceeding upon which the appeal is based. Interested persons should, therefore, take the necessary steps to ensure that a verbatim record of the proceedings is made which contains the testimony and evidence upon which the appeal is based. (F.S.286.0105)

* Any person requiring special accommodations for participation in the meeting should contact the City Clerk at 305 266-1122, with requests for auxiliary aids or services at least two business days before the meeting.

**ANNERY GONZALEZ, MMC
CITY CLERK
9/9**

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