



## Council Report

**To:** The Honorable Mayor and City Council

**From:** Tanya Wilson-Sejour, Director, Community Planning & Development

**Date:** March 27, 2018

**Subject:** Resolution Establishing Citywide Zoning in Progress

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, RECOGNIZING THAT THE CITY OF NORTH MIAMI IS AMENDING ITS LAND DEVELOPMENT REGULATIONS (LDRS) PURSUANT TO SECTION 163.3202, FLORIDA STATUTES, AND HEREBY INVOKING THE ZONING IN PROGRESS OR PENDING ORDINANCE DOCTRINE WITH RESPECT TO THE CITY'S LDRS; PROVIDING THAT FROM MARCH 27, 2018 AND DURING THE PENDENCY OF THE CITY'S CONSIDERATION OF THE NEW LDR AMENDMENTS, EXCEPT AS OTHERWISE SPECIFIED IN THIS RESOLUTION, THE CITY WILL DEFER THE ACCEPTANCE, PROCESSING AND APPROVAL OF APPLICATIONS FOR COMPREHENSIVE PLAN AND LAND DEVELOPMENT REGULATIONS AMENDMENTS, SITE PLAN APPROVALS, AND CONDITIONAL USE PERMITS FOR BONUS DENSITY REQUESTS; PROVIDING FOR EFFECTIVE DATES AND FOR ALL OTHER PURPOSES.**

### **RECOMMENDATION**

That the Mayor and City Council adopt the proposed Resolution, establishing a zoning in progress deferring the acceptance, processing and approval of applications for Comprehensive Plan and Land Development Regulation (LDR) amendments, site plan approvals and conditional use permits for bonus density for a period of 180 days, or until the City Council adopts on second reading, the amendments under review and such amendments become effective, whichever occurs earlier.

### **BACKGROUND**

On July 11, 2017, the Mayor and City Council unanimously passed Ordinance No. 1417, adopting the updated Land Development Regulations (LDRs).

City staff is proposing amendments to the recently updated LDRs to provide for correction of scrivener's errors and any omissions in the most recent update of the land development regulations.

## **PURPOSE & INTENT**

The purpose of the proposed legislation (see attached Resolution) is to establish zoning in progress restrictions for the duration of time the City will be undergoing the update of its Land Development Regulations in order to prevent the acceptance, processing and approval of applications for comprehensive plan text and Future Land Use Map amendments, LDR text and Zoning Map amendments, site plan approval, and for Conditional Use Permits for Bonus Density requests.

**Zoning in progress is a legal status enacted when a change to a local government's land development regulations is being contemplated.** As such, zoning in progress is invoked by a local government with the clear intent to discourage the premature processing of applications that may be in conflict with the proposed changes underway through the City's LDR update and pose adverse impacts to the City's health, safety and welfare. Given the foregoing, if approved the resolution would impact new applications not yet filed with the City. Conversely all existing development applications already filed prior to the date of the subject resolution will continue to be governed by the law in effect at the time the application was originally filed. The aforementioned deferral shall be in effect for 180 days, or until the City Commission adopts on second reading, the amendments under review and such amendments become effective, whichever occurs earlier.

## **CONCLUSION**

City Administration believes the zoning in progress is necessary in order to create certain safeguards to limit the processing of applications that may be detrimental to the City's public health, safety and welfare and conflict with the City's vision as expressly outlined in the comprehensive plan. Notwithstanding, if the resolution is adopted, applicants claiming infringement with vested or constitutional rights, or other justification, may request relief from the proposed resolution through written request to and decision by the Planning Director, where the Planning Director may grant relief only upon findings based on competent substantial evidence that such infringement will in fact occur, or has in fact occurred, or other justification suggesting relief from the effect of the resolution, and the public health, safety and welfare are not adversely impacted by allowing such applications to be accepted and processed.

Such request shall be an administrative remedy and condition precedent to all judicial relief sought arising from the subject resolution. Given the foregoing staff recommends that the Mayor and City Council adopt the proposed resolution as presented.

TWS

Attachment:

1. Proposed Resolution

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, RECOGNIZING THAT THE CITY OF NORTH MIAMI IS AMENDING ITS LAND DEVELOPMENT REGULATIONS (LDRS) PURSUANT TO SECTION 163.3202, FLORIDA STATUTES, AND HEREBY INVOKING THE ZONING IN PROGRESS OR PENDING ORDINANCE DOCTRINE WITH RESPECT TO THE CITY'S LDRS; PROVIDING THAT FROM MARCH 27, 2018 AND DURING THE PENDENCY OF THE CITY'S CONSIDERATION OF THE NEW LDR AMENDMENTS, EXCEPT AS OTHERWISE SPECIFIED IN THIS RESOLUTION, THE CITY WILL DEFER THE ACCEPTANCE, PROCESSING AND APPROVAL OF APPLICATIONS FOR COMPREHENSIVE PLAN AND LAND DEVELOPMENT REGULATIONS AMENDMENTS, SITE PLAN APPROVALS, AND CONDITIONAL USE PERMITS FOR BONUS DENSITY REQUESTS; PROVIDING FOR EFFECTIVE DATES AND FOR ALL OTHER PURPOSES.**

**WHEREAS**, on July 11, 2017, the Mayor and City Council of the City of North Miami ("City") unanimously passed Ordinance No. 1417, adopting the updated Land Development Regulations ("LDRs") in accordance with the requirements of Section 163.3202, Florida Statutes; and

**WHEREAS**, City staff is proposing amendments to the recently updated LDR's to provide for the correction of scrivener's errors and any omissions in the most recent update of the land development regulations; and

**WHEREAS**, the City is concerned that the acceptance, processing and approval of applications for comprehensive plan text and Future Land Use Map amendments, LDR text and Zoning Map amendments, site plan approval, and for Conditional Use Permits for Bonus Density requests, would be premature and detrimental to the public health, safety and welfare, due to the incompleteness of the studies necessary to implement the changes to the LDRs contemplated by the update of the Comprehensive Plan, including but not limited to the study during the update process of impacts that might result from such changes to the LDRs and their relationship to the above identified applications, and other concerns of the City; and

**WHEREAS**, pending the adoption of the amended LDRs, the Mayor and City Council hereby invoke the zoning in progress or pending ordinance doctrine as referenced in Smith v. City of Clearwater, 383 So.2d 681 (Fla. 2nd DCA 1980), with respect to the City's LDRs, thereby deferring the acceptance, processing and approval of all applications identified above; and

**WHEREAS**, the deferral described above shall last for 180 days, or until the City Commission adopts on second reading, the amendments under review and such amendments become effective, whichever occurs earlier, except as provided below; and

**WHEREAS**, applicants claiming infringement with vested or constitutional rights, or other justification, may request relief from this resolution through written request to and decision by the Planning Director, where the Planning Director may grant relief only upon findings based on competent substantial evidence that such infringement will in fact occur, or has in fact occurred, or other justification suggesting relief therefrom, and the public health, safety and welfare are not adversely impacted by allowing such applications to be accepted and processed. Such request shall be an administrative remedy and condition precedent to all judicial relief sought arising from this resolution. Appeals from decisions of the Planning Director shall be processed pursuant to Chapter 29, Article 3, Division 7, of the City Code. Relief for actions taken pursuant to this resolution shall be limited to petitions for writs of certiorari pursuant to the Florida Rules of Appellate Procedure. The City shall retain complete administrative, quasi-judicial or legislative discretion in whether to approve or deny any application so filed.

**NOW, THEREFORE BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:**

**Section 1.**     **Recitals.** The 'WHEREAS' clauses set forth above are incorporated herein by reference.

**Section 2.**     **Approval.** The Mayor and City Council of the City of North Miami, Florida, hereby adopt this Resolution and invoke the zoning in progress or pending ordinance doctrine with respect to the City's LDRs, thereby deferring the acceptance, processing and approval of all applications not filed as of the effective date of this resolution for comprehensive plan text and Future Land Use Map amendments, LDR text and Zoning Map amendments, site plan approval and for Conditional Use Permits for Bonus Density requests; and

This deferral shall last for 180 days, or until the City Commission adopts on second reading the amendments under review and such amendments become effective, whichever occurs earlier, except as provided below; and

Applicants claiming infringement with vested or constitutional rights, or other justification, may request relief from this resolution through written request to and decision by the Planning Director, where the Planning Director may grant relief only upon findings based on competent substantial evidence that such infringement will in fact occur, or has in fact occurred, or other justification suggesting relief therefrom, and the public health, safety and welfare are not adversely impacted by allowing such applications to be accepted and processed. Such request shall be an administrative remedy and condition precedent to all judicial relief sought arising from this resolution. Appeals from decisions of the Planning Director shall be processed pursuant to Chapter 29, Article 3, Division 7, of the City Code. Relief for actions taken pursuant to this resolution shall be limited to petitions for writs of certiorari pursuant to the Florida Rules of Appellate Procedure. The City shall retain complete administrative, quasi-judicial or legislative discretion in whether to approve or deny any application so filed.

**Section 3.** **Effective Date.** This Resolution shall be effective upon adoption.

**PASSED AND ADOPTED** by a \_\_\_\_\_ vote of the Mayor and City Council of the City of North Miami, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
DR. SMITH JOSEPH  
MAYOR

ATTEST:

\_\_\_\_\_  
MICHAEL A. ETIENNE, ESQ.  
CITY CLERK

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
JEFF P. H. CAZEAU, ESQ.  
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

**Vote:**

Mayor Smith Joseph, D.O., Pharm. D.

\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)

Vice Mayor Carol Keys, Esq.

\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)

Councilman Scott Galvin

\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)

Councilman Philippe Bien-Aime

\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)

Councilman Alix Desulme

\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)