



City of Miami Gardens

Agenda Cover Memo

24-133

Meeting: City Council - Jun 12 2024

Department

Mayor and City Council

Sponsored By

City Manager

Agenda Item Title

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AMENDING CHAPTER 2, ARTICLE IX, DIVISION 7 ENTITLED "PUBLIC-PRIVATE PARTNERSHIPS"; PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

Staff Summary

On January 12, 2022, the City adopted Ordinance No. 2022-001-442, creating the policy and procedures for the City to engage in Public-Private Partnerships pursuant to F.S. § 255.065. On April 2, 2024, House Bill (HB) 781 passed the Legislature and will become law on July 1, 2024. HB 781 provides an optional process for local governments to proceed with unsolicited proposals without engaging in a public bidding process.

Fiscal Impact

Business Impact Statement—The proposed amendment to Chapter 2, Article IX, Division 7 entitled "Public-Private Partnerships" of the City of Miami Gardens Code of Ordinances does not bear a direct economic impact on private, for-profit businesses within the City of Miami Gardens.

Recommended Action

City Manager recommends that the City Council amend Chapter 2, Article IX, Division 7 entitled "Public-Private Partnerships" of the City of Miami Gardens Code of Ordinances to adopt the changes reflected in HB 781.

Attachments

[ORDINANCE - Public-Private Partnerships
HB 781](#)

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- (5) If the city receives an unsolicited proposal for a qualifying project pursuant to this section and the city desires to enter into an agreement with the private entity or consortium of private entities submitting the same, the city shall:
- a. Notify the city council of the receipt of said unsolicited proposal by placement of a discussion item on the next available city council meeting agenda.
 - b. Upon the city council's approval to proceed with said unsolicited proposal project, the city ~~may~~ shall publish public notice in the Florida Administrative Register and a local newspaper of general circulation at least once a week for two weeks, on the city's procurement website and/or via the on-line procurement/bidding platform, and a newspaper of general circulation at least once a week for a minimum of two weeks stating that the city has received an unsolicited proposal and that the city will accept other proposals for the same qualifying project.
- (8) The city may proceed with an unsolicited proposal for a qualifying project without engaging in a public bidding process if the city holds a duly noticed public meeting at which the proposal is presented and affected public entities and members of the public are able to provide comment and at a second duly noticed public meeting which determines that the proposal is in the public's interest. In making the public interest determination, the city shall consider all of the following factors:
- a. The benefits to the public.
 - b. The financial structure of and the economic efficiencies achieved by the proposal.
 - c. The qualifications and experience of the private entity that submitted the proposal and such entity's ability to perform the project.
 - d. The project's compatibility with regional infrastructure plans.
 - e. Public comments submitted at the meeting. The city must provide a statement that explains why the proposal should proceed and address such comments.
- (9) If the city decides to proceed with an unsolicited proposal without engaging in a public bidding process, the city shall publish in the Florida Administrative Register for at least 7 days a report that includes all of the following:
- a. The public interest determination required under paragraph (8).
 - b. The factors considered in making such public interest determination.

80 c. The city's findings based on each considered factor.

81
82 (b) *Approval of comprehensive agreement.* Before approving a comprehensive
83 agreement, as such term is described below and in accordance with F.S. §
84 255.065, with any private entity, the city must determine that the proposed
85 project:

86
87 (1) Is in the public's best interest, if the proposal was solicited. If the proposal
88 was unsolicited, the city must determine that the proposed project has
89 been determined to be in the public's interest in accordance with
90 paragraph (8).

91
92 (2) Is for a facility that is owned by the city or for a facility for which
93 ownership will be conveyed to the city. For a proposed project that was
94 unsolicited, if ownership will not be conveyed to the city within 10 years
95 after initial public operation begins, the public benefits apart from
96 ownership must be identified and stated by the city in the public interest
97 determination required under paragraph (8).

98
99 (3) Has adequate safeguards in place to ensure that:

- 100
101 a. additional costs or service disruptions are not imposed on the
102 public in the event of material default or cancellation of the
103 comprehensive agreement by the city.
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105 b. the city or private entity has the opportunity to add capacity to the
106 proposed project or other facilities serving similar predominantly
107 public purposes.

108
109 (4) If the proposal was solicited, will be owned by the city upon completion,
110 expiration, or termination of the comprehensive agreement and upon
111 payment of the amounts financed.

112
113 (c) *Project qualifications and process.* The city must ensure that any
114 comprehensive agreement entered into between the city and a private entity, at
115 a minimum, ensures that:

116
117 (1) Provision is made for the private entity's performance and payment of
118 subcontractors, including, but not limited to, surety bonds, letters of
119 credit, parent company guarantees, and lender and equity partner
120 guarantees. For the components of the qualifying project which involve
121 construction performance and payment, bonds are required and are
122 subject to the recordation, notice, suit limitation, and other requirements
123 of F.S. § 255.05.

- 124
125 a. The most efficient pricing of the security package that provides for
126 the performance and payment of subcontractors.

127 b. The comprehensive agreement addresses termination upon a
128 material default of the comprehensive agreement.

129
130 (2) After the public notification period has expired in the case of an unsolicited
131 proposal that is submitted and noticed for public bidding, After the
132 deadline for submitting proposals has expired, the city shall rank the
133 proposals received in order of preference based on factor that include,
134 but are not limited to, professional qualifications, general business terms,
135 innovative design techniques or cost-reduction terms, and finance plans.
136 The city may then begin negotiations for a comprehensive agreement
137 with the highest-ranked firm.

138
139 Section 3. CONFLICT: All ordinances or Code provisions in conflict herewith
140 are hereby repealed.

141 Section 4. SEVERABILITY: If any section, subsection, sentence, clause,
142 phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by
143 any court of competent jurisdiction, such portion shall be deemed a separate, distinct
144 and independent provision and such holding shall not affect the validity of the remaining
145 portions of this Ordinance.

146 Section 5. INCLUSION IN CODE: It is the intention of the City Council of
147 the City of Miami Gardens that the provisions of this Ordinance shall become and be
148 made a part of the Code of Ordinances of the City of Miami Gardens and that the
149 section of this Ordinance may be renumbered or relettered and the word "Ordinance"
150 may be changed to "Chapter," "Section," "Article" or such other appropriate word or
151 phrase, the use of which shall accomplish the intentions herein expressed.

152 Section 6. EFFECTIVE DATE: This Ordinance shall become effective on July
153 1, 2024.

154 PASSED ON FIRST READING ON THE ____ DAY OF _____, 2024.

155 PASSED ON SECOND READING ON THE ____ DAY OF _____, 2024.

156

157 ADOPTED AND PASSED BY THE CITY COUNCIL OF THE CITY OF MIAMI
158 GARDENS AT ITS REGULAR MEETING HELD ON THE _____ DAY OF
159 _____, 2024.

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161 _____
162 RODNEY HARRIS, MAYOR
163

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165
166 **ATTEST:**

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169 _____
170 MARIO BATAILLE, MMC, CITY CLERK

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173 PREPARED BY: SONJA KNIGHTON DICKENS, ESQ., CITY ATTORNEY

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176 SPONSORED BY: CAMERON D. BENSON, CITY MANAGER

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179 Moved by: _____

180 Second by: _____

181
182 **VOTE:** _____

183
184 Mayor Rodney Harris _____ (Yes) _____ (No)
185 Vice Mayor Katrina Wilson _____ (Yes) _____ (No)
186 Councilwoman Shannon Campbell _____ (Yes) _____ (No)
187 Councilwoman Shannan Ighodaro _____ (Yes) _____ (No)
188 Councilwoman Linda Julien _____ (Yes) _____ (No)
189 Councilman Reggie Leon _____ (Yes) _____ (No)
190 Councilman Robert Stephens, III _____ (Yes) _____ (No)

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CS/HB 781

2024 Legislature

1
 2 An act relating to unsolicited proposals for public-
 3 private partnerships; amending s. 255.065, F.S.;
 4 authorizing, rather than requiring, a responsible
 5 public entity to publish notice of an unsolicited
 6 proposal for a qualifying project in a specified
 7 manner and that other proposals for the same project
 8 will be accepted; authorizing a responsible public
 9 entity to proceed with an unsolicited proposal for a
 10 qualifying project without a public bidding process if
 11 the responsible public entity holds a public meeting
 12 that meets certain requirements and holds a subsequent
 13 public meeting at which the responsible public entity
 14 makes a certain determination; requiring the
 15 responsible public entity to consider certain factors;
 16 requiring the responsible public entity to publish a
 17 certain report in the Florida Administrative Register
 18 for a certain period of time in certain circumstances;
 19 revising certain determinations that a responsible
 20 public entity must make before approving a
 21 comprehensive agreement; conforming provisions to
 22 changes made by the act; providing an effective date.

23
 24 Be It Enacted by the Legislature of the State of Florida:
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2024 Legislature

26 Section 1. Present paragraphs (c) through (f) of
 27 subsection (3) of section 255.065, Florida Statutes, are
 28 redesignated as paragraphs (e) through (h), respectively, new
 29 paragraphs (c) and (d) are added to that subsection, and
 30 paragraph (b) and present paragraph (d) of that subsection and
 31 paragraph (c) of subsection (5) of that section are amended, to
 32 read:

33 255.065 Public-private partnerships.—

34 (3) PROCUREMENT PROCEDURES.—A responsible public entity
 35 may receive unsolicited proposals or may solicit proposals for a
 36 qualifying project and may thereafter enter into a comprehensive
 37 agreement with a private entity, or a consortium of private
 38 entities, for the building, upgrading, operating, ownership, or
 39 financing of facilities.

40 (b)1. The responsible public entity may request a proposal
 41 from private entities for a qualifying project or, if the
 42 responsible public entity receives an unsolicited proposal for a
 43 qualifying project and the responsible public entity intends to
 44 enter into a comprehensive agreement for the project described
 45 in the unsolicited proposal, the responsible public entity may
 46 ~~shall~~ publish notice in the Florida Administrative Register and
 47 a newspaper of general circulation at least once a week for 2
 48 weeks stating that the responsible public entity has received a
 49 proposal and will accept other proposals for the same project.

50 2. The timeframe within which the responsible public

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51 | entity may accept other proposals shall be determined by the
52 | responsible public entity on a project-by-project basis based
53 | upon the complexity of the qualifying project and the public
54 | benefit to be gained by allowing a longer or shorter period of
55 | time within which other proposals may be received; however, the
56 | timeframe for allowing other proposals must be at least 21 days,
57 | but no more than 120 days, after the initial date of
58 | publication. If approved by a majority vote of the responsible
59 | public entity's governing body, the responsible public entity
60 | may alter the timeframe for accepting proposals to more
61 | adequately suit the needs of the qualifying project. A copy of
62 | the notice must be mailed to each local government in the
63 | affected area.

64 | (c) The responsible public entity may proceed with an
65 | unsolicited proposal for a qualifying project without engaging
66 | in a public bidding process if the responsible public entity
67 | holds a duly noticed public meeting at which the proposal is
68 | presented and affected public entities and members of the public
69 | are able to provide comment and at a second duly noticed public
70 | meeting determines that the proposal is in the public's
71 | interest. In making the public interest determination, the
72 | responsible public entity must consider all of the following
73 | factors:

- 74 | 1. The benefits to the public.
75 | 2. The financial structure of and the economic

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76 | efficiencies achieved by the proposal.

77 | 3. The qualifications and experience of the private entity
 78 | that submitted the proposal and such entity's ability to perform
 79 | the project.

80 | 4. The project's compatibility with regional
 81 | infrastructure plans.

82 | 5. Public comments submitted at the meeting. The
 83 | responsible public entity must provide a statement that explains
 84 | why the proposal should proceed and addresses such comments.

85 | (d) If the responsible public entity decides to proceed
 86 | with an unsolicited proposal without engaging in a public
 87 | bidding process, the responsible public entity must publish in
 88 | the Florida Administrative Register for at least 7 days a report
 89 | that includes all of the following:

90 | 1. The public interest determination required under
 91 | paragraph (c).

92 | 2. The factors considered in making such public interest
 93 | determination.

94 | 3. The responsible public entity's findings based on each
 95 | considered factor.

96 | ~~(f)-(d)~~ Before approving a comprehensive agreement, the
 97 | responsible public entity must determine that the proposed
 98 | project:

99 | 1. Is in the public's best interest, if the proposal was
 100 | solicited. If the proposal was unsolicited, the responsible

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101 public entity must determine that the proposed project has been
 102 determined to be in the public's interest in accordance with
 103 paragraph (c).

104 2. Is for a facility that is owned by the responsible
 105 public entity or for a facility for which ownership will be
 106 conveyed to the responsible public entity. For a proposed
 107 project that was unsolicited, if ownership will not be conveyed
 108 to the responsible public entity within 10 years after initial
 109 public operation begins, the public benefits apart from
 110 ownership must be identified and stated by the responsible
 111 public entity in the public interest determination required
 112 under paragraph (c).

113 3. Has adequate safeguards in place to ensure that
 114 additional costs or service disruptions are not imposed on the
 115 public in the event of material default or cancellation of the
 116 comprehensive agreement by the responsible public entity.

117 4. Has adequate safeguards in place to ensure that the
 118 responsible public entity or private entity has the opportunity
 119 to add capacity to the proposed project or other facilities
 120 serving similar predominantly public purposes.

121 5. If the proposal was solicited, will be owned by the
 122 responsible public entity upon completion, expiration, or
 123 termination of the comprehensive agreement and upon payment of
 124 the amounts financed.

125 (5) PROJECT QUALIFICATION AND PROCESS.—

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126 (c) After the public notification period has expired in
127 the case of an unsolicited proposal that is submitted and
128 noticed for public bidding, the responsible public entity shall
129 rank the proposals received in order of preference. In ranking
130 the proposals, the responsible public entity may consider
131 factors that include, but are not limited to, professional
132 qualifications, general business terms, innovative design
133 techniques or cost-reduction terms, and finance plans. The
134 responsible public entity may then begin negotiations for a
135 comprehensive agreement with the highest-ranked firm. If the
136 responsible public entity is not satisfied with the results of
137 the negotiations, the responsible public entity may terminate
138 negotiations with the proposer and negotiate with the second-
139 ranked or subsequent-ranked firms, in the order consistent with
140 this procedure. If only one proposal is received, the
141 responsible public entity may negotiate in good faith, and if
142 the responsible public entity is not satisfied with the results
143 of the negotiations, the responsible public entity may terminate
144 negotiations with the proposer. Notwithstanding this paragraph,
145 the responsible public entity may reject all proposals at any
146 point in the process until a contract with the proposer is
147 executed.

148 Section 2. This act shall take effect July 1, 2024.