



Staff Report to the St. Petersburg Community Planning & Preservation Commission

Prepared by the Planning & Development Services Department,
Urban Planning and Historic Preservation Division

For Public Hearing on Tuesday, August 10, 2021
at 2:00 p.m. in the City Council Chambers, City Hall,
175 Fifth Street North, St. Petersburg, Florida.

City File: LGCP 2021-02 **Private Property Rights, HB 59**

This is a City-initiated application requesting that the Community Planning and Preservation Commission (“CPPC”), in its capacity as the Local Planning Agency (“LPA”), make a finding of consistency with the Comprehensive Plan and recommend to City Council **APPROVAL** of the following text amendments to the Comprehensive Plan pertaining to House Bill 59 (effective July 1, 2021), which requires all local governments to adopt into their Comprehensive Plans a new property rights element along with a model statement of private property rights.

APPLICANT INFORMATION

APPLICANT: City of St. Petersburg
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St. Petersburg, Florida 33712

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INTRODUCTION

The 2021 Florida legislative session passed House Bill 59 (SB 496) sponsored by Representative Stan McClain (District 23) that was signed by the Governor on June 29, 2021 with an effective date of July 1, 2021. Among other items, the bill amends Section 163.3177 F.S. requiring all local governments to adopt a property rights element into their Comprehensive Plan prior to adopting a plan amendment initiated after July 1, 2021. This new property rights element is to incorporate a set of model private property rights statements that are provided for in the bill.

REQUEST

The City is requesting a text amendment to the Comprehensive Plan that will incorporate the addition of a new chapter, chapter 15, titled “Property Rights” in order to be compliant with Florida Statutes Section 163.3177 recently amended by HB 59. The amended statute requires this new element to incorporate the below model language that includes the following four acknowledgments to ensure that private property rights are considered in the local decision-making process:

- the right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights;
- the right of a property owner to use, maintain, develop, and improve his or her property for personal use or the use of any other person, subject to state law and local ordinances;
- the right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property; and
- the right of the property owner to dispose of his or her property through sale or gift.

BACKGROUND

The model statements of property rights provided by HB 59 is largely duplicative of rights already protected by the Constitutions of both the United States and the State of Florida as well as Florida’s Bert Harris Act. However, sponsors of various versions of the bill assert that by requiring the placement of these statements into local Comprehensive Plans, of which all local government land development regulations must be consistent with, it will ensure that local government entities will “respect judicially acknowledged and constitutionally protected private property rights”¹ granted by the US and State Constitutions (see Attachment 1).

LGCP 2021-01: PROPOSED COMPREHENSIVE PLAN TEXT AMENDMENT

Chapter 15, Property Rights Element is proposed for inclusion as a new element and to be added to the table of contents, where amendments are made below in ~~strike through~~ and underline format as follows:

Sections:

Chapter 15, Property Rights Element

15.1 Introduction

15.2 Goals, Objectives and Policies

ISSUE: Private Property Rights

15.1 Introduction

The mandatory requirement for all local jurisdictions to adopt a Property Rights Element into their Comprehensive Plans became effective on July 1, 2021 for the purpose of insuring that private property rights are considered in local decision making.

15.2 Goals, Objectives and Policies

GOAL PR: In accordance with the legislative intent expressed in Sections 163.3161(10) and 187.101(3), Florida Statutes, this Comprehensive Plan shall respect judicially acknowledged and constitutionally protected private property rights.

¹ House Bill 49 page 3 line 62

ISSUE: Private Property Rights

Private property rights are protected by the Constitutions of both the United States and the State of Florida as well as Florida’s Bert Harris Act. In 2021 the Florida State Legislature passed House Bill 59 which requires the addition of a Private Property Rights Element to include the placement of private property rights statements into local Comprehensive Plans so as to ensure that local government entities will “respect judicially acknowledged and constitutionally protected private property rights” granted by the US and State Constitutions.

OBJECTIVE PR1: The following statements of private property rights shall be considered in local decision making.

Policy PR1.1 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 PR1.2 The right of a property owner to use, maintain, develop, and improve his or her property for personal use or the use of any other person, subject to state law and local ordinances.

Policy PR1.3 The right of the property owner to privacy and to exclude others from the property to protect the owner’s possessions and property.

Policy PR1.4 The right of a property owner to dispose of his or her property through sale or gift.

CONSISTENCY with the COMPREHENSIVE PLAN

The proposed Comprehensive Plan text amendment does not conflict with any current goals, objectives or policies.

PUBLIC NOTICE

Public hearing notice was published in the Tampa Bay Times on Wednesday, July 28, 2021 in accordance with Florida Statutes, Section 163.3174(1).

PUBLIC HEARING PROCESS

The proposed ordinance associated with the Comprehensive Plan text amendment requires one (1) public hearing before the Community Planning & Preservation Commission (CPPC) and two (2) City Council public hearings. The amendment will also be transmitted for expedited state, regional and county review. Forward Pinellas will review the Comprehensive Plan text amendment for consistency with the Countywide Rules.

SUMMARY

Based upon the analysis contained in this report, City staff finds the proposed text amendments to be internally consistent with the Comprehensive Plan and necessary to achieve compliance with Florida Statutes Section 163.3177.

RECOMMENDATION

Staff recommends that the Community Planning and Preservation Commission, in its capacity as the Local Planning Agency, make a finding of consistency with the Comprehensive Plan and recommend to City Council **APPROVAL** of the Comprehensive Plan text amendments described herein.

ATTACHMENTS

1. HB 59



ATTACHMENT NO. 1

HB 59

ENROLLED

CS/CS/CS/HB 59, Engrossed 1

2021 Legislature

1
2 An act relating to growth management; amending s.
3 163.3167, F.S.; specifying requirements for certain
4 comprehensive plans effective, rather than adopted,
5 after a specified date and for associated land
6 development regulations; amending s. 163.3177, F.S.;
7 requiring local governments to include a property
8 rights element in their comprehensive plans; providing
9 a statement of rights which a local government may
10 use; requiring a local government to adopt a property
11 rights element by the earlier of its adoption of its
12 next proposed plan amendment initiated after a certain
13 date or the next scheduled evaluation and appraisal of
14 its comprehensive plan; prohibiting a local
15 government's property rights element from conflicting
16 with the statement of rights contained in the act;
17 amending s. 163.3237, F.S.; providing that the consent
18 of certain property owners is not required for
19 development agreement changes under certain
20 circumstances; providing an exception; amending s.
21 337.25, F.S.; requiring the Department of
22 Transportation to afford a right of first refusal to
23 certain individuals under specified circumstances;
24 providing requirements and procedures for the right of
25 first refusal; amending s. 380.06, F.S.; authorizing

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26 | certain developments of regional impact agreements to
 27 | be amended under certain circumstances; providing
 28 | retroactive applicability; providing a declaration of
 29 | important state interest; providing an effective date.

30 |

31 | Be It Enacted by the Legislature of the State of Florida:

32 |

33 | Section 1. Subsection (3) of section 163.3167, Florida
 34 | Statutes, is amended to read:

35 | 163.3167 Scope of act.—

36 | (3) A municipality established after the effective date of
 37 | this act shall, within 1 year after incorporation, establish a
 38 | local planning agency, pursuant to s. 163.3174, and prepare and
 39 | adopt a comprehensive plan of the type and in the manner set out
 40 | in this act within 3 years after the date of such incorporation.

41 | A county comprehensive plan is controlling until the
 42 | municipality adopts a comprehensive plan in accordance with this
 43 | act. A comprehensive plan for a newly incorporated municipality
 44 | which becomes effective ~~adopted~~ after January 1, 2016 ~~2019~~, and
 45 | all land development regulations adopted to implement the
 46 | comprehensive plan must incorporate each development order
 47 | existing before the comprehensive plan's effective date, may not
 48 | impair the completion of a development in accordance with such
 49 | existing development order, and must vest the density and
 50 | intensity approved by such development order existing on the

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2021 Legislature

51 effective date of the comprehensive plan without limitation or
 52 modification.

53 Section 2. Paragraph (i) is added to subsection (6) of
 54 section 163.3177, Florida Statutes, to read:

55 163.3177 Required and optional elements of comprehensive
 56 plan; studies and surveys.—

57 (6) In addition to the requirements of subsections (1)-
 58 (5), the comprehensive plan shall include the following
 59 elements:

60 (i)1. In accordance with the legislative intent expressed
 61 in ss. 163.3161(10) and 187.101(3) that governmental entities
 62 respect judicially acknowledged and constitutionally protected
 63 private property rights, each local government shall include in
 64 its comprehensive plan a property rights element to ensure that
 65 private property rights are considered in local decisionmaking.
 66 A local government may adopt its own property rights element or
 67 use the following statement of rights:

68
 69 The following rights shall be considered in local
 70 decisionmaking:

71
 72 1. The right of a property owner to physically
 73 possess and control his or her interests in the
 74 property, including easements, leases, or mineral
 75 rights.

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2. 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.

3. The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.

4. The right of a property owner to dispose of his or her property through sale or gift.

2. Each local government 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. If a local government adopts its own property rights element, the element may not conflict with the statement of rights provided in subparagraph 1.

Section 3. Section 163.3237, Florida Statutes, is amended to read:

163.3237 Amendment or cancellation of a development agreement.—A development agreement may be amended or canceled by

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2021 Legislature

101 mutual consent of the parties to the agreement or by their
 102 successors in interest. A party or its designated successor in
 103 interest to a development agreement and a local government may
 104 amend or cancel a development agreement without securing the
 105 consent of other parcel owners whose property was originally
 106 subject to the development agreement, unless the amendment or
 107 cancellation directly modifies the allowable uses or
 108 entitlements of such owners' property.

109 Section 4. Subsection (4) of section 337.25, Florida
 110 Statutes, is amended to read:

111 337.25 Acquisition, lease, and disposal of real and
 112 personal property.—

113 (4) The department may convey, in the name of the state,
 114 any land, building, or other property, real or personal, which
 115 was acquired under subsection (1) and which the department has
 116 determined is not needed for the construction, operation, and
 117 maintenance of a transportation facility. When such a
 118 determination has been made, property may be disposed of through
 119 negotiations, sealed competitive bids, auctions, or any other
 120 means the department deems to be in its best interest, with due
 121 advertisement for property valued by the department at greater
 122 than \$10,000. A sale may not occur at a price less than the
 123 department's current estimate of value, except as provided in
 124 paragraphs (a)-(d). The department may afford a right of first
 125 refusal to the local government or other political subdivision

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126 | in the jurisdiction in which the parcel is situated, except in a
127 | conveyance transacted under paragraph (a), paragraph (c), or
128 | paragraph (e). Notwithstanding any provision of this section to
129 | the contrary, before any conveyance under this subsection may be
130 | made, except a conveyance under paragraph (a) or paragraph (c),
131 | the department shall first afford a right of first refusal to
132 | the previous property owner for the department's current
133 | estimate of value of the property. The right of first refusal
134 | must be made in writing and sent to the previous owner via
135 | certified mail or hand delivery, effective upon receipt. The
136 | right of first refusal must provide the previous owner with a
137 | minimum of 30 days to exercise the right in writing and must be
138 | sent to the originator of the offer by certified mail or hand
139 | delivery, effective upon dispatch. If the previous owner
140 | exercises his or her right of first refusal, the previous owner
141 | has a minimum of 90 days to close on the property. The right of
142 | first refusal set forth in this subsection may not be required
143 | for the disposal of property acquired more than 10 years before
144 | the date of disposition by the department.

145 | (a) If the property has been donated to the state for
146 | transportation purposes and a transportation facility has not
147 | been constructed for at least 5 years, plans have not been
148 | prepared for the construction of such facility, and the property
149 | is not located in a transportation corridor, the governmental
150 | entity may authorize reconveyance of the donated property for no

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151 | consideration to the original donor or the donor's heirs,
152 | successors, assigns, or representatives.

153 | (b) If the property is to be used for a public purpose,
154 | the property may be conveyed without consideration to a
155 | governmental entity.

156 | (c) If the property was originally acquired specifically
157 | to provide replacement housing for persons displaced by
158 | transportation projects, the department may negotiate for the
159 | sale of such property as replacement housing. As compensation,
160 | the state shall receive at least its investment in such property
161 | or the department's current estimate of value, whichever is
162 | lower. It is expressly intended that this benefit be extended
163 | only to persons actually displaced by the project. Dispositions
164 | to any other person must be for at least the department's
165 | current estimate of value.

166 | (d) If the department determines that the property
167 | requires significant costs to be incurred or that continued
168 | ownership of the property exposes the department to significant
169 | liability risks, the department may use the projected
170 | maintenance costs over the next 10 years to offset the
171 | property's value in establishing a value for disposal of the
172 | property, even if that value is zero.

173 | (e) If, at the discretion of the department, a sale to a
174 | person other than an abutting property owner would be
175 | inequitable, the property may be sold to the abutting owner for

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176 | the department's current estimate of value.

177 | Section 5. Paragraph (d) of subsection (4) of section
178 | 380.06, Florida Statutes, is amended to read:

179 | 380.06 Developments of regional impact.—

180 | (4) LOCAL GOVERNMENT DEVELOPMENT ORDER.—

181 | (d) Any agreement entered into by the state land planning
182 | agency, the developer, and the local government with respect to
183 | an approved development of regional impact previously classified
184 | as essentially built out, or any other official determination
185 | that an approved development of regional impact is essentially
186 | built out, remains valid unless it expired on or before April 6,
187 | 2018, and may be amended pursuant to the processes adopted by
188 | the local government for amending development orders. Any such
189 | agreement or amendment may authorize the developer to exchange
190 | approved land uses, subject to demonstrating that the exchange
191 | will not increase impacts to public facilities. This paragraph
192 | applies to all such agreements and amendments effective on or
193 | after April 6, 2018.

194 | Section 6. The Legislature finds and declares that this
195 | act fulfills an important state interest.

196 | Section 7. This act shall take effect July 1, 2021.