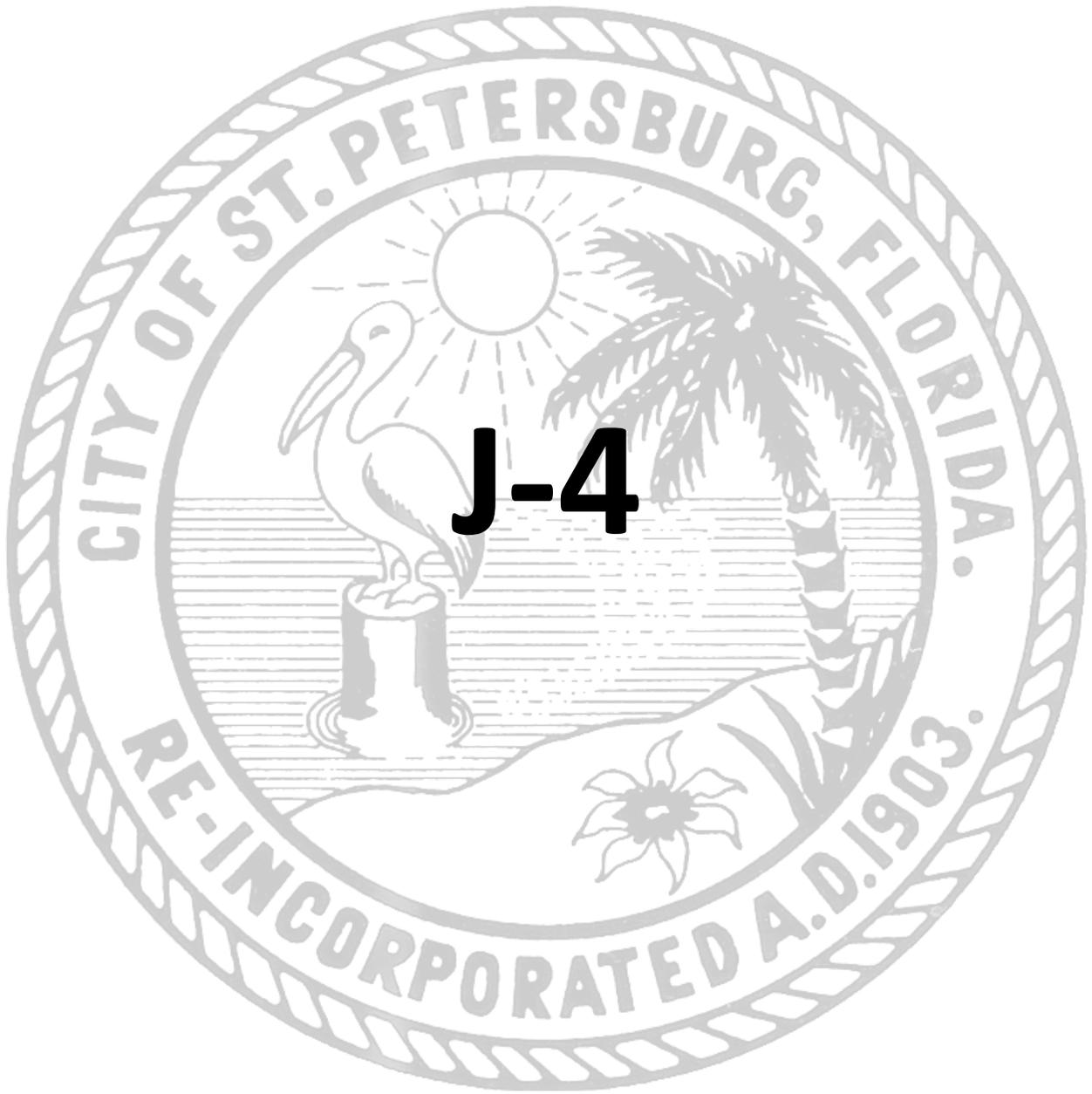


The following page(s) contain the backup material for Agenda Item: Proposed text amendment to the Comprehensive Plan pertaining to HB 59 requiring adoption of a new Property Rights Element. Please scroll down to view the backup material.



**J-4**



**ST. PETERSBURG CITY COUNCIL**

**Meeting of October 14, 2021**

**TO:** The Honorable Ed Montanari, Chair, and Members of City Council

**SUBJECT:** Proposed text amendment to the Comprehensive Plan pertaining to HB 59 requiring adoption of a new Property Rights Element. (City File: LGCP-21-02)

ORDINANCE 480-H, amending the Comprehensive Plan by adding a new Chapter 15, Property Rights Element, for which to incorporate a model statement of private property rights.

**BACKGROUND:** A detailed analysis is provided in the attached staff report.

**RECOMMENDATION:**

Administration: City staff recommends APPROVAL.

Community Planning & Preservation Commission (CPPC): On August 10, 2021, the CPPC held a public hearing regarding the Comprehensive Plan text amendment and made a finding of internal consistency with the City's Comprehensive Plan and voted 5 to 0 to recommend APPROVAL.

Previous City Council Action: On September 9, 2021, City Council conducted the first reading and first public hearing for the proposed ordinance. There was no discussion or public comment

Recommended City Council Action:

- 1) CONDUCT the second reading and second public hearing of the attached proposed ordinance;
- AND
- 2) APPROVE the attached Ordinance.

Attachments: Ordinance, CPPC Staff Report and Draft Minutes

ORDINANCE NO. 480-H

AN ORDINANCE OF THE CITY OF ST. PETERSBURG, FLORIDA  
AMENDING ITS COMPREHENSIVE PLAN; ADDING A NEW  
CHAPTER 15, PROPERTY RIGHTS ELEMENT; PROVIDING FOR  
SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Chapter 163, Florida Statutes, established the Community Planning Act; and

WHEREAS, consistent with the requirements of the Community Planning Act, the City of St. Petersburg (City) has adopted a Comprehensive Plan to establish goals, objectives and policies to guide the development and redevelopment of the City; and

WHEREAS, 163.3177(6)(i)1., the Florida Statutes requires the City's Comprehensive Plan to include a property rights element; and

WHEREAS, the City respects the rights of all people to participate in land use planning processes; and

WHEREAS, this ordinance will amend the comprehensive plan by adding a property rights element, Chapter 15;

THE CITY OF ST. PETERSBURG, FLORIDA, DOES ORDAIN:

**Section 1.** Property Rights, Chapter 15 of the St. Petersburg Comprehensive Plan is hereby created 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.

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.

**Section 3.** Coding. As used in this ordinance, language appearing in struck-through type is language to be deleted from the City Code, and underlined language is language to be added to the City Code, in the section, subsection, or other location where indicated. Language in the City Code not appearing in this ordinance continues in full force and effect unless the context clearly indicates otherwise.

**Section 4.** Severability. The provisions of this ordinance shall be deemed severable. If any provision of this ordinance is determined to be unconstitutional or otherwise invalid, such determination shall not affect the validity of any other provisions of this ordinance.

**Section 5.** Effective Date. In the event this Ordinance is not vetoed by the Mayor in accordance with the City Charter, it shall become effective upon the expiration of the fifth business day after adoption unless the Mayor notifies the City Council through written notice filed with the City Clerk that the Mayor will not veto this Ordinance, in which case this Ordinance shall become effective immediately upon filing such written notice with the City Clerk. In the event this Ordinance is vetoed by the Mayor in accordance with the City Charter, it shall not become effective unless and until the City Council overrides the veto in accordance with the City Charter, in which case it shall become effective immediately upon a successful vote to override the veto.

*Michael J. Dema*  
City Attorney (Designee)



## 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  
175 5<sup>th</sup> Street North  
St. Petersburg, Florida 33712

**STAFF CONTACT:** Britton Wilson, AICP, Planner II  
Urban Planning and Historic Preservation Division  
Planning and Development Services Department  
One – 4<sup>th</sup> Street North  
St. Petersburg, Florida 33711  
Britton.Wilson@stpete.org  
(727) 551-3542

#### **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”<sup>1</sup> 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.

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<sup>1</sup> House Bill 59 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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CS/CS/CS/HB 59, Engrossed 1

2021 Legislature

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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CS/CS/CS/HB 59, Engrossed 1

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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CS/CS/CS/HB 59, Engrossed 1

2021 Legislature

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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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CS/CS/CS/HB 59, Engrossed 1

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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CS/CS/CS/HB 59, Engrossed 1

2021 Legislature

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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2021 Legislature

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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CS/CS/CS/HB 59, Engrossed 1

2021 Legislature

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.



**CITY OF ST. PETERSBURG  
COMMUNITY PLANNING & PRESERVATION COMMISSION  
PUBLIC HEARING**

**Council Chambers, City Hall  
175 – 5<sup>th</sup> Street North  
St. Petersburg, Florida 33701**

**August 10, 2021  
Tuesday  
2:00 P.M.**

**MINUTES**

**Present:** C. Copley Gerdes, Chair  
Sharon Winters, Vice Chair  
Jeff Rogo  
Will Michaels, Alternate  
Christopher “Chris” A. Burke, Alternate

**Commissioners Absent:** Thomas “Tom” Whiteman  
Jeffery “Jeff” M. Wolf  
Lisa Wannemacher, Alternate

**Staff Present:** Derek Kilborn, Manager, Urban Planning & Historic Preservation  
Laura Duvekot, Historic Preservationist II  
Kelly Perkins, Historic Preservationist II  
Britton Wilson, Planner II  
Ann Vickstrom, Planner II  
Heather Judd, Assistant City Attorney  
Michael Dema, Assistant City Attorney  
Katherine Connell, Admin. Asst., Planning & Development Svcs.

The public hearing was called to order at 2:01:54 p.m., a quorum was present.

**I. OPENING REMARKS OF CHAIR**

**II. ROLL CALL**

**III. PLEDGE OF ALLEGIANCE AND SWEARING IN OF WITNESSES**

**IV. RULES OF PROCEDURE DISCUSSION & VOTE**

Commissioner Winters moved adoption of the Rules of Procedure, Commissioner Rogo seconded. Motion passed unanimously

V. **MINUTES** (Approval of 07/13 Minutes)

The minutes from the July 13, 2021, meeting were approved unanimously

VI. **PUBLIC COMMENTS**

VII. **PUBLIC HEARING**

A. **City File No. LGCP 2021-02**

**Contact Person: Britton Wilson, 551-3542**

**Request:** City initiated application requesting to amend the Comprehensive Plan pertaining to House Bill 59, which requires local governments to adopt a new Property Rights Element for which to incorporate a model statement of private property rights into their Comprehensive Plans.

**Staff Presentation**

Britton Wilson gave a PowerPoint presentation based on the Staff Report.

**Registered Opponent**

None.

**Public Hearing**

None.

**Executive Session**

Commissioner Michaels: Does this cause the need for a change in any of the other rules and regulations that we have? The land development regulations particularly how they affect historic preservation?

Britton Wilson: No, this Comprehensive Plan amendment is consistent, internally consistent with the Comprehensive Plan and Land Development Regulations. The State of Florida Constitution already protects private rights, property rights as well as The Burt Harris Act. This is kind of duplicative, but it is necessary to be in line with House Bill 59.

Commissioner Michaels: Thank you.

Commissioner Winters: I understand the need to comply, I guess I have a question for Mr. Dema. What overrides what? When it comes to the Land Development Regulations, the work we do, the work that DRC does, because if you took some of this really literally you could say, well we are not going to do setbacks, we are not going to do zoning. I am trying to understand what prevails here.

Attorney Dema: Commissioner, I agree with Ms. Wilson's statement that this is duplicative, it is superfluous, it is a restatement of the law as it is right now. There is a legislative agenda here, to state the obvious, in my opinion. What we are doing here is basically, copying verbatim, just to comply with state law, the state constitution, the Burt Harris Act, it is always things that we have to consider. In the context of zoning in historic preservation etcetera, we still have those police powers to regulate the health, safety and welfare of our citizens, and this changes absolutely nothing. There is always, to this day the judicial stands for at least a federal taking is too far, that is literally what the standard is. What we have in terms of zoning, and whatnot, we think that that is in line with our traditional powers to do so. We will be still following our Comprehensive Plan and Land Development Regulations as we have been.

Commissioner Winters: Thank you, I just want to make a comment about the legislature's continuing attempts to essentially seize local control from the municipalities and it sounds like that is not the case here but it is a political statement.

Attorney Dema: I think it is in the spirit of that, what they are trying to do in terms of making a statement here. I and my colleagues, both in planning and legal agree that there is no fundamental change or any change at all.

Commissioner Winters: Okay, thank you.

Commissioner Rogo: Mr. Chair thank you, I was going to follow up on Commissioner Michaels' question and I think Mr. Dema has answered that question by saying that our historic preservation ordinances do take, not necessarily precedence but they are not negatively impacted by the language of these changes.

Attorney Dema: No, we always consider private property rights, I mean that's the balance, that is what we do at the DRC and CPPC, is to strike that balance between private property rights and the regulations that have been reasonably adopted over the years to protect planning and zoning here in the City. That calculus is going to continue to happen at both commissions and city council as well.

Commissioner Rogo: Thank you.

Commissioner Gerdes: Any further questions or comments?

Commissioner Burke: I would like to make a motion that we adopt the amendment as written.

Commissioner Rogo: Second.

Commissioner Gerdes: Any questions or comments before we vote? Okay, lets vote.

**VOTE: YES -5 – Gerdes, Burke, Michaels, Rogo, Winters**  
**NO – 0**

***Motion passed unanimously***



# **LGCP 2021-02 HB59: Private Property Rights**

Planning & Development  
Services Department

**City Council Item J.4**

October 14, 2021

# Background: Purpose

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- Incorporate the addition of Chapter 15, “Property Rights Element” to achieve compliance with F.S. Sec. 163.3177; and
- Incorporate the model set of private property rights statements provided by the bill.

# Background: Request

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- HB 59 requires all governments to adopt a set of private property rights statements prior to adopting any other plan amendments.

# Property Rights Element:

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**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.

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

# Property Rights Element

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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.

# Recommendation

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Staff recommends **APPROVAL** of the proposed Comprehensive Plan text amendment creating a new Property Rights element.



# **LGCP 2021-02**

# **HB59: Private**

# **Property Rights**

Planning & Development  
Services Department

**City Council**

October 14, 2021



# Property Rights Element:

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## **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.