



DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

PLANNING & ZONING BOARD STAFF REPORT

Comprehensive Plan Amendment, Private Property Rights Element

Meeting	File No.	Application Type
August 16, 2021	NA	Comprehensive Plan Text Amendment

Applicant

City of Delray Beach

Request

Provide a recommendation to the City Commission on the Always Delray Comprehensive Plan Amendment, Ordinance No. 30-21, adopting a new Private Property Rights Element in compliance with statutory changes to Section 163.3177, Florida Statutes.

Background Information

House Bill 59, which was signed into law on June 29, 2021 by Governor DeSantis, updates Section 163.3177(6), Florida Statutes. Effective July 1, 2021, each local government is required to adopt a Private Property Rights element into its comprehensive plan. This new element must be adopted by the local governing body either by the earlier of the date of the adoption of the next proposed plan amendment, or the date of the next scheduled evaluation and appraisal of the comprehensive plan pursuant to Section 163.3191, Florida Statutes.

Any proposed comprehensive plan amendment package, which includes Land Use Map amendments, that is submitted after July 1, 2021, must have been "initiated" by July 1, 2021 or it will be returned to the local government if the package does not include the new element or if the comprehensive plan does not already it. Therefore, the adoption of a Private Property Rights Element is time sensitive to prevent delays in finalization of other City initiated or privately initiated comprehensive plan amendments currently submitted and under review.

The Department of Economic Opportunity (DEO) has provided clarification by indicating that it will consider a proposed plan amendment to be "initiated" as:

- The amendment is first considered at a public hearing, as outlined in Section 163.3174(4), Florida Statutes, held by the local planning agency; or
- The local government planning authority deems complete a submitted application for a change to the comprehensive plan.

If prior to July 2, 2021, either of these events has occurred, the local planning agency may complete the adoption process for that comprehensive plan amendment package in accordance with the process set forth in Chapter 163, Florida Statutes.

The City currently has three land use map amendments that are in different stages of processing; two requests, one City initiated and the other privately initiated, have received a First Reading by the City Commission and are awaiting scheduling of the Second Reading. The third request, which is privately initiated, was submitted in April 2021 and has been going through the technical review process for compliance with the Land Development Regulations (LDR). These applications will not be affected by the requirement to adopt the subject element as they're deemed "complete".

The final version of HB59 is provided as an attachment, as well as a summary of the bill.

Description of Proposal

The proposed Private Property Rights Element is made up of the Data, Inventory, and Analysis (DIA) and Goals, Objectives, and Policies (GOP), consistent with the other elements of the Always Delray Comprehensive Plan. Sections 163.3177 and 163.3184, Florida Statutes

provide the requirements for comprehensive plan adoption and updates. The following language has been adopted to Section 163.3177(6), Florida Statutes via HB 59 related to the property rights element:

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

The following rights shall be considered in local decisionmaking:

- 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.*
- 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.*

In addition to the above, an objective and related policies are also included that address transparency, reliability, and predictability in decision-making, which was provided in a draft version of the element published by 1,000 Friends of Florida. The associated policies acknowledge that the City already makes information available for public review, comment, and participation, and that the City will continue to do so.

The final version of HB59 is provided as an attachment, as well as a summary of the bill. Also included in the attachments is the draft Data, Inventory, and Analysis (DIA) for the new element. While adoption of the DIA is not required, it is provided to the Board for review and comments.

Review and Analysis

Pursuant to **LDR Section 2.4.5(A), Procedures for obtaining development approvals: Amendments to the Comprehensive Plan**, amendments to the Comprehensive Plan shall be processed pursuant to F.S. 163.3184 through 163.3253, as may be amended. The proposed Private Property Rights Elements is being processed in accordance with the requirements of the Florida Statutes. See "Review by Others" for the complete review schedule that is anticipated.

Pursuant to **LDR Section 2.2.2(E)(1), The Planning and Zoning Board: Duties, powers, and responsibilities**, the Board shall prepare and maintain a Comprehensive Plan in compliance with the Florida State Planning Statutes (163 and successor legislation). In addition, **LDR Section 2.2.2(E)(3)(a), The Planning and Zoning Board: Duties, powers, and responsibilities**, the Board shall review and make recommendations to the City Commission with respect to amendments to the Comprehensive Plan.

The "Review by Others" section of this report provides an anticipated timeline for the processing and adoption schedule of the Private Property Rights Element. There is no specific criteria related to the adoption of the Private Property Rights Element. While the Comprehensive Plan and LDR provide direction and regulations to appropriately develop and maintain property for both the overall benefit of the community and the private property owner, the proposed element is not deemed to create any conflicts between the GOPs and the current LDR.

Review By Others

Chapter 163.3184 provides the specific process to amend the City's Comprehensive Plan. The proposed amendment is processed for expedited review, which includes the following steps:

- **Planning and Zoning Board Review.** As the Local Planning Agency (LPA), the Planning and Zoning Board will review the amendment and provide a recommendation to the City Commission.
- **City Commission Review**
 - Public Hearing No. 1, Transmittal Hearing
 - Tentative Date: *September 23, 2021*

- Transmittal to the State Land Planning Agency (DEO) and applicable state review agencies within ten working days of the hearing.
- Comments returned to the City by DEO and review agencies within 30 days of receipt.
- Public Hearing No. 2, Adoption Hearing
 - Tentative Date: *December 7, 2021*
 - Hearing No. 2 must take place within 180 days of receipt of comments by reviewing agencies.
 - Transmittal of the adopted amendments to DEO and any agency that provided review comments within 10 working days of the hearing.
- **Amendment Effective Date**
 - If no challenge to the amendment is filed by an affected person, within 30 days of the adoption hearing, the amendment becomes effective within 31 days.

At the time of transmittal to the State DEO, the following reviewing agencies will also be provided a copy:

- Treasure Coast Regional Planning Council
- Palm Beach County

Board Action Options

- A. Move a recommendation of **approval** of Ordinance No. 30-21, adopting an amendment to the Comprehensive Plan entitled “Always Delray Comprehensive Plan Amendment, Ordinance No. 30-21” to add a new Private Property Rights Element in compliance with statutory changes to Section 163.3177, Florida Statutes, finding that the amendment and approval thereof is consistent with the Comprehensive Plan and meets the applicable criteria set forth in the Land Development Regulations.
- B. Move a recommendation of **approval** of Ordinance No. 30-21, **as amended**, adopting an amendment to the Comprehensive Plan entitled “Always Delray Comprehensive Plan Amendment, Ordinance No. 30-21” a new Private Property Rights Element in compliance with statutory changes to Section 163.3177, Florida Statutes, finding that the amendment and approval thereof is consistent with the Comprehensive Plan and meets the applicable criteria set forth in the Land Development Regulations, **with conditions**.
- C. Move a recommendation of **denial** of Ordinance No. 30-21, adopting an amendment to the Comprehensive Plan entitled “Always Delray Comprehensive Plan Amendment, Ordinance No. 30-21” a new Private Property Rights Element in compliance with statutory changes to Section 163.3177, Florida Statutes, finding that the amendment and approval thereof is not consistent with the Comprehensive Plan and does not meet the applicable criteria set forth in the Land Development Regulations.
- D. Continue With Direction.

Public and Courtesy Notices

Courtesy Notices have been provided to the following:

- Chamber of Commerce
- DDA
- CRA
- Pineapple Grove Main Street
- Homeowner’s Associations (those on file with the City)

Public Notice was published in the Sun Sentinel 10 calendar days prior to the meeting.

Public Notice was posted to the City’s website 10 calendar days prior to the meeting.

Public Notice was posted in the main lobby at City Hall 10 working days prior to the meeting.

Agenda was posted at least 5 working days prior to meeting.