



LAND DEVELOPMENT STAFF REPORT AND RECOMMENDATION

Subject/Agenda Item:**Ordinance 2021-14: Property Rights Element Text Amendment**

Second Reading & Adoption: A City-initiated request for a text amendment that will add a Property Rights Element within the City of Greenacres Comprehensive Plan as required by Florida Statutes.

☒ Recommendation to APPROVE

☐ Recommendation to DENY

☐ Quasi-Judicial

☒ Legislative

☒ Public Hearing

Originating Department:

Development and Neighborhood Services

Project Manager

Caryn Gardner-Young, Zoning Administrator

Reviewed By:

Director of Development and Neighborhood Services

Kara L. Irwin-Ferris, AICP

Glen J. Torcivia
City Attorney

Approved By:

City Manager

Andrea McCue

Public Notice:

☒ Required

☐ Not Required

Dates: 10/7/21; 10/21/21; 12/23/21

Paper: The Lake Worth Herald

Mailing

☐ Required

☒ Not Required

Notice Distance: _____

Attachments:

- Ordinance 2021-14
- Exhibit A

City Council Action:

☐ Approval

☐ Approve with conditions

☐ Denial

☐ Continued to: _____

I. Executive Summary

On April 1, 2021, the Florida House passed CS/CS/CS/HB 59 (Harris Act) with the bill subsequently passing the Florida Senate on April 8, 2021. Governor DeSantis signed the legislation into law on June 29, 2021 (Chapter 2021-195, Laws of Florida).

Statutory provisions in Chapter 163, Florida Statutes, related to comprehensive plans, were amended to require each local government to adopt a Property Rights Element into their comprehensive plan. Inclusion of the Property Rights Element is intended to protect private property rights and to ensure they are considered in local decision-making.

The new law adds Section 163.3177(6)(i), Florida Statutes. Effective July 1, 2021, each local government is required to adopt a Property Rights Element by the earlier of: (1) the adoption of its next proposed plan amendment that is initiated after July 1, 2021, or (2) the date of the next scheduled evaluation and appraisal of its comprehensive plan pursuant to Section 163.3191, Florida Statutes.

The Florida Department of Economic Opportunity has interpreted the term “initiated” to mean the date of the Local Planning Agency (our Planning Commission) hearing and not the date an application was received. So, only those Land Use Amendment items that went to Local Planning Agency in June or earlier can proceed to City Council for adoption prior to the adoption of the new Property Rights Element. This could potentially impact small scale amendments that went or are going to Planning Commission in July and thereafter, meaning they could be delayed until the Property Rights Element is adopted. It is anticipated that the new Property Rights Element will be reviewed by the Planning Commission in September, and that an ordinance will be brought forward to the City Council as soon as practicable in order to reduce and/or avoid unnecessary delays.

II. Proposed Comprehensive Plan Amendments:

The following is a proposed comprehensive plan amendment. Items which are proposed for deletion are in **~~Strike-Through~~**, items proposed for addition are in **Single Underline**.

INTRODUCTION

A. PURPOSE OF ELEMENT

Under current law, local governments create and adopt local comprehensive plans to control and direct land use and development within a county or municipality. First adopted in 1975 and extensively expanded in 1985, Florida’s comprehensive land planning laws were significantly revised in 2011, becoming the Community Planning Act (CPA). The CPA directs how local governments create and adopt their local comprehensive plans. The CPA requires that all governmental entities in the state recognize and respect judicially acknowledged or constitutionally protected private property rights and exercise their authority without unduly restricting private property rights, leaving property owners free from actions by others that would harm their property or constitute an inordinate burden on property rights under the Harris Act. However, there was no requirement to specifically

include language in a local government's comprehensive plan to address private property rights.

On April 1, 2021, the Florida House passed CS/CS/CS/HB 59 (Harris Act) with the bill subsequently passing the Florida Senate on April 8, 2021. Governor DeSantis signed the legislation into law on June 29, 2021 (Chapter 2021-195, Laws of Florida). Statutory provisions in Chapter 163, Florida Statutes, related to comprehensive plans, were amended to require each local government to adopt a Property Rights Element into their comprehensive plan. Inclusion of the Property Rights Element is intended to protect private property rights and to ensure they are considered in local decision-making. The new law adds Section 163.3177(6)(i), Florida Statutes. Effective July 1, 2021, each local government is required to adopt a Property Rights Element by the earlier of: (1) the adoption of its next proposed plan amendment that is initiated after July 1, 2021, or (2) the date of the next scheduled evaluation and appraisal of its comprehensive plan pursuant to Section 163.3191, Florida Statutes.

II. GOALS, OBJECTIVES AND POLICIES

A. GOAL: Acknowledge the Florida Constitution and its protection of private property rights and ensure that private property rights are considered in local decision-making.

Objective 1:

The City shall ensure that private property rights are considered in local decision-making.

Policy a)

Subject to applicable federal, state and local laws including without limitation Florida Statutes and the City's Code of Ordinances, the following rights shall be considered in local decision making:

- (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.
- (3) The right of the property owner to privacy and to exclude others from their property for the protection of the owner's possessions and property.
- (4) The right of a property owner to dispose of his or her property through lineal transfer, sale, or gift

Policy b)

All development applications, including comprehensive plan amendments, shall be made available for public review and an aggrieved or adversely affected person shall be provided equal opportunity for participation in all associated hearings consistent with the requirements of the City's Code of Ordinances and applicable law.

III. Consistency with the Strategic Regional Policy Plan and Chapter 163.3184 F.S.:

Overall, the proposed Comprehensive Plan text amendment is consistent with the Treasure Coast Regional Planning Council's Strategic Regional Policy Plan and Chapter 163, F.S.

IV. Staff Recommendation:

The Land Development Staff met on September 23, 2021 to discuss the proposed amendment. No objections were received.

Approval of CPA-21-04 through the adoption of Ordinance 2021-14.

LOCAL PLANNING AGENCY ACTION – October 20, 2021

The Local Planning Agency on a motion made by Commissioner Neustein and seconded by Commissioner Roberts, by a vote of five (5) to zero (0) recommended approval of Comprehensive Plan Amendment **CPA-21-02** (Property Rights Element) as presented by staff.

CITY COUNCIL ACTION First Reading – November 1, 2021

The City Council on a motion made by Council Member Pearce and seconded by Council Member Dugo, voting four (4) to zero (0) ***approved*** Comprehensive Plan Amendment **CPA-21-02** (Property Rights Element), on first reading through ***Ordinance 2021-14***, as presented by staff.

CITY COUNCIL ACTION Adoption Hearing –
