



Application for Amending the Text of the Comprehensive Plan



Including changes to maps other than the Future Land Use Map

Text Amendments submitted by entities other than a department of Leon County or City of Tallahassee government or the Local Planning Agency must be approved by the City or County Commission before they are included in the Comprehensive Plan Amendment Cycle.

Please contact the Planning Department prior to the pre-application deadline of September 15, 2021 to discuss this process.

Applicant Name: Tallahassee - Leon County Planning Department

Address: 435 N. Macomb St Tallahassee, FL 32301

Telephone: (850) 891-6400

E-mail Address: Planning@talgw.com

Goals, Objectives, Policy Numbers or figures to be amended: Property Rights Element

REQUIRED ATTACHMENTS

- Attachment 1: A strikethrough/underline version of any requested text changes.
Attachment 2: Amended version of any requested changes to maps or figures.
Attachment 3: Statement of the problem that is to be addressed by the requested amendment and anticipated positive effects of the request on the community.

APPLICATION FEES

Text Amendments \$1,500 plus actual cost of direct notice and legal advertising

APPLICATION DEADLINE: Friday, September 24, 2021 at 5:00 PM (EST)

Received by the Tallahassee-Leon County Planning Department

on the 21 day of May, 2021

Staff Signature

Signature of Applicant

## XII. Property Rights

### Property Rights GOALS, OBJECTIVES AND POLICIES

#### **Goal 1: [PR]**

Respect judicially acknowledged and constitutionally protected private property rights.

#### **Objective 1.1: [PR]**

Consider private property rights in local decision-making.

#### ***Policy 1.1.1: [PR]***

The following rights shall be considered in local decision-making:

- (1) The right of a property owner to physically possess and control their interests in the property, including easements, leases, or mineral rights, subject to state law and local ordinances.
- (2) The right of a property owner to use, maintain, develop, and improve their 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, subject to state law and local ordinances.
- (4) The right of a property owner to dispose of their property through sale or gift, subject to state law and local ordinances.

The proposed Property Rights Element attached addresses the 2021 legislative changes to Section 163.3177 resulting from House Bill 59.

These changes require all local governments to adopt a Property Rights Element into the local government 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.

The 2022 Comprehensive Plan Amendment Cycle is the next proposed plan amendment cycle after July 1, 2021.

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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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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:

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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

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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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.