

**City of South Daytona**  
**Community Development Department**

1672 S. Ridgewood Avenue • South Daytona, FL 32119 • 386/322-3022 • Fax 386/322-3018



**MEMORANDUM**

**To: James L. Gillis Jr.**  
**City Manager**

**From: S. Laureen Kornel**  
**Community Development Director**

**Date: November 2, 2021**

**Re: First Reading of Ordinance No. 2021-03 Approving a Large-Scale Comprehensive Plan Amendment to create a new Private Property Rights Element of the Comprehensive Plan**

**AGENDA ITEM**

**Item # 18**

**Date: November 9, 2021**

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This is an administrative request to approve Ordinance No. 2021-03, amending the Comprehensive Plan to create a new Private Property Rights Element.

Governor DeSantis signed HB 59, amending Section 163.3177, Florida Statutes (Chapter 2021-195-Laws of Florida) requiring every local government to adopt and include a property rights element in its Comprehensive Plan. The proposed element is the minimum state of rights necessary to comply with the new State law. The ordinance must be adopted by the local government before processing any other amendment to the City's Comprehensive Plan, effective July 1, 2021. On October 20, 2021, the Planning and Appeals Board reviewed the proposed the Comprehensive Plan amendment and unanimously recommended approval. There were no public comments for or against the amendment.

The amendment is considered a large-scale Comprehensive Plan Amendment eligible for expedited State review pursuant to Section 163.3184, F.S. The amendment also requires a Volusia Growth Management Commission (VGMC) consistency determination. The City Council adoption hearing (second reading of the Ordinance) will be scheduled after the Department of Economic Opportunity (DEO) and VGMC certification of the amendment, sometime early in the new year. The attached ordinance includes the proposed Private Property Rights Comprehensive Plan Element in underline.

Staff recommends that the City Council **APPROVE** at first reading, Ordinance No. 2021-03, an administrative request for a Large-scale Comprehensive Plan amendment, as specified in underline in the attached ordinance, to create a new Private Property Rights Element of the Comprehensive Plan and to authorize staff to transmit the amendment to the DEO and the VGMC.

Attachment: Ordinance No. 2021-03

**ORDINANCE NO. 2021-03**

**AN ORDINANCE OF THE CITY OF SOUTH DAYTONA, FLORIDA, AMENDING THE CITY'S COMPREHENSIVE PLAN TO CREATE A NEW PRIVATE PROPERTY RIGHTS ELEMENT; AND PROVIDING FOR ADMINISTRATIVE ACTIONS, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of South Daytona has adopted a Comprehensive Plan in accordance with the State of Florida Community Planning Act; and

**WHEREAS**, HB 59 (2021), enacted as Ch. 2021-195, Laws of Florida, amended Section 163.3177, Florida Statutes, to require cities and counties to adopt and include a property rights element in their comprehensive plans, and to provide that such adoption must occur no later than the adoption of the local government's next proposed comprehensive plan amendment after July 1, 2021, or the date of the next scheduled evaluation and appraisal of its comprehensive plan; and

**WHEREAS**, HB 59 specifies a statement of private property rights that, if adopted, would satisfy the requirements of the law; and

**WHEREAS**, the property rights element provided in this comprehensive plan amendment conforms to the statement of private property rights specified in HB 59; and

**WHEREAS**, on October 20, 2021, the City of South Daytona Planning and Appeals Board, serving as the local planning agency, held a public hearing on the proposed amendment to the City of South Daytona Comprehensive Plan in accordance with Chapter 163, Florida Statutes, and recommended adoption of the proposed amendment to the City Council; and

**WHEREAS**, the City Council has held public hearings concerning the comprehensive plan amendment in accordance with Chapter 163, Florida Statutes; and

**WHEREAS**, the proposed amendment was submitted to the Volusia Growth Management Commission (the "VGMC") for review, and following said review, the VGMC issued a Consistency Certification thereon; and

**WHEREAS**, the City has received and considered the written objections, recommendations, and comments from the State Land Planning Agency, other State agencies, and all interested persons; and

**WHEREAS**, the City Council has considered the proposed comprehensive plan amendment, finds that adoption thereof is in the best interest and welfare of the citizens of the City as it complies with state law, and has determined that all conditions required for the adoption of this amendment have been met, including the necessary hearings and public notices, in conformity

with the procedural and substantive requirements of Florida Statutes, the City of South Daytona Land Development Code, and the Comprehensive Plan, as amended hereby; and

**WHEREAS**, for purposes of this Ordinance, underlined type shall constitute additions to the original text, \*\*\* shall constitute ellipses to the original text and ~~strike through~~ shall constitute deletions to the original text.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, VOLUSIA COUNTY, FLORIDA THAT:**

**SECTION 1. Recitals.** The above recitals are true and correct and are incorporated herein by reference.

**SECTION 2. Adoption.** The City Council of the City of South Daytona hereby amends the City of South Daytona Comprehensive Plan to create a Property Rights Element, as follows:

**PROPERTY RIGHTS ELEMENT**

**GOAL: TO RESPECT JUDICIALLY ACKNOWLEDGED AND CONSTITUTIONALLY PROTECTED PRIVATE PROPERTY RIGHTS.**

**Objective 1:** Ensure that private property rights are considered in local decision making.

**Policy 1.1:** The following private property 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, 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.**

**SECTION 3. Administrative Actions.** The City Manager, or designee, is hereby authorized and directed to implement the provisions of this Ordinance and to take any and all

necessary administrative actions to include, but not be limited to, the adoption of administrative forms, policies, procedures, processes and rules.

**SECTION 4. Codification.** The provisions of Section 2 of this Ordinance shall become and be made a part of the City of South Daytona Comprehensive Plan, and the contents of this Ordinance may be re-numbered or re-lettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; sections other than those specified shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

**SECTION 5. Conflicts.** All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

**SECTION 6. Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

**SECTION 7. Effective Date.** In accordance with Section 163.3184(3)(c)(4), Florida Statutes, the comprehensive plan amendment set forth herein shall not become effective until 31 days after the state land planning agency notifies the City that the plan amendment package is complete. If timely challenged, the comprehensive plan amendment set forth in this Ordinance shall not become effective until the state land planning agency or the Administration Commission enters a final order determining the adopted comprehensive plan amendment to be in compliance with controlling state law.

**APPROVED** upon first reading on the 9<sup>th</sup> day of November, 2021 at a regular meeting of the City Council of the City of South Daytona.

**APPROVED AND ADOPTED** upon second and final reading on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at a regular meeting of the City of South Daytona City Council.

ATTEST:

\_\_\_\_\_  
James L. Gillis, Jr., City Manager

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William C. Hall, Mayor

CERTIFIED AS TO FORM:

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Wade C. Vose, City Attorney