



PLANNING & DEVELOPMENT DEPARTMENT COMMUNITY DEVELOPMENT BOARD STAFF REPORT

MEETING DATE: December 21, 2021
AGENDA ITEM: F.3.
CASE: CPA2021-11001
ORDINANCE NO.: 9515-22
REQUEST: To amend the *Clearwater Comprehensive Plan* to address the statutory requirements for the 2021 Private Property Rights Element (House Bill 59); to encourage diverse housing options through density bonuses for certain development types; to amend the Housing Element to support reduced multi-modal impact fees; and to update the Coastal Storm Area and Hurricane Storm Surge maps.
INITIATED BY: City of Clearwater, Planning and Development Department

BACKGROUND:

On June 29, 2021, Governor Ron DeSantis signed into law Florida House Bill 59, “An Act relating to growth management; requiring local governments to include a property rights element in their comprehensive plans” (Private Property Rights). In accordance with this new law, Florida Statutes require that local governments must adopt a property rights element within their comprehensive plans to “ensure that private property rights are considered in local decisionmaking.” There are four rights which must 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.

Source: Section 163.3177(6)(i)1, Florida Statutes

The statements above are 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. The sponsors of the bill wanted to ensure that local government entities will "respect judicially acknowledged and constitutionally protected private property rights" granted by the US and State Constitutions (House Bill 59, page 3, line 62).

In addition to the new Property Rights Element, Proposed Ordinance 9515-22 includes amendments updating Maps E-1A, E-1B and E-2, relating to the Coastal Storm Area and Hurricane Storm Surge map within the Coastal Management Element. On August 4, 2021, the new Sea, Lake and Overland Surges from Hurricanes (SLOSH) maps were adopted by NOAA. The City's Coastal High Hazard Area and Coastal Storm Area are determined from the Category 1 Storm Surge included in the SLOSH model. Based on NOAA's new model, the Coastal Storm Area has changed and the proposed Maps E-1A and E-1B reflect the new data. Map E-2 shows the updated storm surges for Categories 1 through 5 as well. NOAA updates the SLOSH model periodically, with the changes being effective upon NOAA adoption. The city, along with other municipalities, must update their maps to remain consistent. The last update to these maps was in 2017 (Ordinance 9048-17).

Proposed Ordinance 9515-22 also includes amendments to encourage development of new and preservation of existing affordable and workforce housing, furthering the city's commitment to these goals established earlier this year when the city approved the Advantage Pinellas Housing Compact on July 15, 2021. These amendments primarily revise existing objectives and policies found in the Future Land Use and Housing Elements, with the creation of one new policy in the Housing Element.

The Countywide Rules allow cities to establish density or intensity bonuses for affordable and missing middle housing types, along with vertical mixed-use developments. The bonuses for missing middle and vertical mixed-use development types were added in 2019 to help provide for housing options while maintaining and preserving established single-family neighborhoods, and to help focus higher densities around existing and proposed transit routes throughout the county. Missing middle housing is defined in the Rules as "Housing that encompasses a range of smaller, multi-unit or clustered housing types (such as shotgun, skinny, duplex, triplex, fourplex, courtyard apartment, bungalow court, townhouse, multiplex, and live/work units), which are compatible in scale and design with single-family homes, and are designed to encourage walking, biking, and transit use." Local governments must prepare appropriate analysis and adopt development parameters within their comprehensive plans or land development codes to be able to realize the density bonuses, including form-based or other regulations limiting the size and scale of missing middle housing to ensure compatibility with adjacent neighborhood-scale development. The proposed amendments set the policy direction for the city to implement these bonuses in the code at a future date.

Lastly, in July 2019, Pinellas County amended its multimodal impact fee so now impact fees for single-family housing are based on the size of the unit broken into three size ranges: 0-1,500 square feet; 1,501-2,499 square feet; and 2,500 square feet and over. In addition, fees were reduced for housing units for "low-income households". The city incorporates the county's fee schedule by reference within the Code of Ordinances; however, the addition of a new policy within the Housing Element aims to bring awareness to

and show the city's support for this incentive to facilitate development of affordable, and specifically low-income housing within the city. Projects that have already utilized this reduced multimodal impact fee include recent Habitat for Humanity projects.

ANALYSIS:

The proposed amendments to the *Comprehensive Plan* are summarized below:

1. **New Property Rights Element, Goal K.1 and its Objective and Policies** [page 4 of ordinance]

This new goal, one objective and four policies are the model private property rights statements provided for in House Bill 59. The approach of using the statute's language as policies in the plan is being used by many municipalities to comply with the House Bill which was effective as of June 29, 2021. Until the required Property Rights Element is adopted, cities cannot adopt any other amendments to their comprehensive plans, including Future Land Use Map amendments. As detailed above, this element 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. Existing Policy A.4.1.4 of the *Comprehensive Plan* will not be changing, and this proposed new element will not conflict with this existing policy.

2. **Housing Amendments** [pages 1 through 3, Exhibit "A" of ordinance]

Amendments proposed to the Future Land Use and Housing Elements address housing affordability. Other amendments correct typographical errors and clarify policy intent.

Amended Policy A.6.1.1 adds in "affordable housing, missing middle housing, and vertically integrated, transit supportive mixed-use development projects" as types of projects that are encouraged and supported with development incentives, such as density bonuses. Similarly, amended Policy C.1.1.7 adds language for affordable and missing middle housing as a means to further the goal of providing a variety of housing choices through development tools such as density bonuses or height increases. Amended Objective C.1.1 adds language for the diversity of housing options provided for to meet the evolving needs of Clearwater households.

Proposed Policy C.1.1.2 expands the types of housing the city should address in the Community Development Code to meet the housing needs of the residents to include missing middle housing types.

Currently, Policy C.1.1.8 provides for accessory dwelling units and outlines certain parameters to be included in the Community Development Code, but as currently written it is not clear that an accessory dwelling unit would not need the acreage to support the extra unit based on the permitted density. The proposed amendment to Policy C.1.1.8 clarifies that accessory dwelling units are permitted within certain residential zoning districts and that they are exempt from density provisions; however, it continues to require that they meet certain Community Development Code provisions and also establishes that an accessory dwelling unit cannot be used for a short term rental.

Additionally, Policy C.1.2.8 further supports the City's utilization of Pinellas County's Multimodal Impact Fee, as well as the County's reduced fee structure for units designated as low-income households which was incorporated by the County in July 2019.

3. Map Amendments [Exhibit "A" of ordinance]

The last amendments replace Maps E-1A and E-1B, the Coastal Storm Area maps, and E-2, the Hurricane Storm Surge map. The City's Coastal Storm Area is based largely on the Category 1 Storm Surge (Maps E-1A and E-1B), and with the new data, the hurricane storm surge zones have now changed (Map E-2). The Coastal Storm Area maps are broken into two showing the west coast (Gulf of Mexico) and the east coast (Old Tampa Bay) of Clearwater. Larger scale maps are maintained by the Planning and Development department. Overall, the Coastal Storm Area has decreased by approximately 1.75% from 2017, from approximately 2,577 acres to 2,532 acres in 2021.

STANDARDS FOR REVIEW:

Pursuant to Community Development Code Section 4-603.F., no amendment to the *Comprehensive Plan* shall be approved unless it complies with the following standards:

1. The amendment will further implementation of the *Comprehensive Plan* consistent with the goals, policies and objectives contained in the Plan.

The proposed amendments to the *Clearwater Comprehensive Plan* are consistent with the following goal, objectives and policy in the *Plan*:

- Policy A.4.1.4 The City shall recognize the overriding Constitutional principle that private property shall not be taken without due process of law and the payment of just compensation, which principle is restated in Section 163.3194(4)(a), Florida Statutes.
- Objective A.6.1 The redevelopment of blighted, substandard, inefficient and/or obsolete areas shall be a high priority and promoted through the implementation of redevelopment and special area plans, the construction of catalytic private projects, city investment, and continued emphasis on property maintenance standards.
- Objective C.1.1 Assure an adequate supply of housing in Clearwater by providing for additional new dwelling units in a variety of types, costs, and locations to meet the needs of the residents of the City of Clearwater.
- Objective C.1.2 The City of Clearwater shall continue to provide assistance and incentives for the development of housing that affordable to very low, low, and moderate income households, including those with special needs, consistent with the level of growth in these income categories.

Objective C.1.9 The City of Clearwater shall be proactive in incentivizing the construction of affordable housing.

Goal E.1 Management of Clearwater's Coastal Storm Area shall provide for the long-term accessibility, safety, economic viability, neighborhood stability, and environmental integrity of these unique resources.

Objective E.1.2 The coastal storm area shall be the area delineated in Maps E-1A and E-1B of the Coastal Management Element ... The City shall direct permanent population concentrations away from the coastal storm area consistent with the goals, objectives and policies of the *Clearwater Comprehensive Plan*.

The proposed amendments address new requirements in the Florida Statutes, and also address constitutional rights for property owners, consistent with Policy A.4.1.4. Additionally, the above policy already acknowledges the fact that private property shall not be taken without due process.

Amendments to Policies A.6.1.1, C.1.1.2, C.1.1.5, C.1.1.7 and C.1.1.8 and Objective C.1.1 reinforce that workforce, affordable and missing middle housing projects are appropriate for density bonuses and that those project types, in addition to accessory dwelling units, encourage and support the city's objective to have an adequate supply of housing within the City. Although the new policies would require additional planning to implement in the Community Development Code, they provide the necessary policy foundation for that future work, thereby furthering the intent and purpose of the appropriate objectives and goals.

Updating Maps E-1A and E-1B will reflect new SLOSH modeling data as referenced above. The new maps are consistent with Objective E.1.2, which defines what shall be included in the defined coastal storm area. Map E-2 is also being updated due to the updated SLOSH modeling.

2. The amendment is not inconsistent with other provisions of the *Comprehensive Plan*.

The proposed amendments are not in conflict with other provisions of the *Comprehensive Plan*. The proposed amendments will add a new goal, objective and policies to the *Comprehensive Plan* to ensure that private property rights are considered in the local decision-making process, as required by state law, and propose additional amendments that are not otherwise inconsistent with the *Comprehensive Plan*.

3. The available uses, if applicable, to which the property may be put are appropriate to the property in question and compatible with existing and planned uses in the area.

The majority of the amendments do not relate to specific properties; however, the Coastal Storm Area maps do relate to specific properties and, based on scientific modeling, place designations that may limit the use of certain properties (e.g., existing Policy E.1.2.5, which establishes that new hospitals, nursing homes and assisted living facilities are prohibited from locating in the Coastal Storm Area). This limitation of certain uses is based on data and is a matter of public safety.

4. Sufficient public facilities are available to serve the property.

This is not applicable to the proposed amendments as the proposed changes do not relate to a specific property or properties except for the updated maps; however, the maps do not expand development potential. Therefore, the adequacy of available public facilities will need to be assessed on a case-by-case basis as development proposals are received.

5. The amendment will not adversely affect the natural environment.

This is not applicable to the proposed amendments as the proposed changes do not relate to a specific property or properties except for the maps; however, the maps are related towards the built environment and moving permanent populations away from the Coastal Storm Area. Therefore, the protection of the natural environment will need to be assessed on a case-by-case basis as development proposals are received.

6. The amendment will not adversely impact the use of property in the immediate area.

The goal of the statutory requirements and the proposed Property Rights Element are to ensure that private property rights are considered in local decision-making. The additional amendments are adding resources to housing objectives that the city currently does and should continue to do, along with fixing typographical errors and clarifying policy intent. Therefore, this is not applicable to the proposed amendments as they do not relate to a specific property or properties.

SUMMARY AND RECOMMENDATION:

The purpose of this proposed ordinance is to comply with the recently adopted requirements of the Florida Statutes to adopt a Property Rights Element within the City's Comprehensive Plan, to expand the city's options to address housing affordability and to update the city's Coastal Storm Area and Hurricane Storm Surge maps based on new data. The proposed amendments are consistent with and will further the goals, objectives, and policies of the *Clearwater Comprehensive Plan*, will not result in inappropriate or incompatible uses, will not adversely affect the natural environment or impact the use of the property in the immediate area, and sufficient public facilities exist to implement the proposed amendments.

Based upon the above, the Planning and Development Department recommends **APPROVAL** of Ordinance No. 9515-22 that amends the *Clearwater Comprehensive Plan*.

Prepared by Planning and Development Department Staff: _____



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ATTACHMENTS: Ordinance No. 9515-22
Resume