



# Property Rights Element

City of Punta Gorda Comprehensive Plan 2045

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## I. EXECUTIVE SUMMARY

The *Property Rights Element* ensures that private property rights are considered in local decision-making, in accordance with section 163.3177(6)(i)1, *Florida Statutes*, which requires that governmental entities respect judicially acknowledged and constitutionally protected private property rights.

## II. INTRODUCTION

### Purpose

The purpose of the *Property Rights Element* is to:

1. Identify specific property rights and state that local government will respect them.
2. Identify the rights of people to participate in decisions that affect their lives and property.
3. Provide standards for local government decision-making to be reliable and predictable to promote sound, long-term investments in a community.

### Relationship to the City's Comprehensive Plan

The *Property Rights Element* ensures compliance with Florida Statutes regarding the protection of private property rights through the implementation of the Comprehensive Plan. It relates to the other elements as follows:

- ❖ It is through the *Future Land Use Element* and the Future Land Use Map that the City's growth management strategy is fully implemented. Therefore, it is essential that the uses prescribed by the Future Land Use Map be consistent with sound planning goals and objectives, and the policies of the *Property Rights Element* promote compatibility between development activities and the conservation of natural resources.
- ❖ The *Conservation Element* inventories and describes the city's existing and proposed natural preserves and conservation areas within and adjacent to the city. This element contains key data and goals concerning use and protection of natural resources, including exceptional natural resource areas, wildlife corridors, and other issues having implications for location of development which must be consistent with the protections offered in the *Property Rights Element*.
- ❖ The *Coastal Management Element* contains key data and goals concerning exceptional natural estuary areas, beach, waterway access, resiliency, and other issues having implications for park and recreation location criteria, and water based recreation activities. The *Property Rights Element* provides policies essential to the protection of natural and coastal resources on private properties.
- ❖ The *Infrastructure Element* is divided into sections pertaining to drainage, solid waste, and the provision of sewer and potable water services. The *Property Rights Element*, and overall policies regarding the City's infrastructure, must be taken into consideration during the establishment of levels of service for water and sewer facilities if the adopted level of service is to be maintained at the time the development impacts occur.
- ❖ The *Housing Element* acts as the guide to local decision makers in their efforts to enact policy that will affect the housing needs of the residents while still considering the protections offered



in the *Property Rights Element*.

- ❖ The *Recreation and Open Space Element* identifies the potential recreational opportunities and open space needs of the city's residents and visitors. The protections of the *Property Rights Element* must be considered in these decisions particularly as they relate to property acquisitions or adverse impacts from new recreational activities on adjacent private properties.
- ❖ The *Community Facilities and Services Element* identifies the location and arrangements of civic community centers, public schools, hospitals, libraries, police and fire stations, and other public facilities. The element identifies the City facilities as well as other facilities and services available to the community. The location of these facilities need to be considered in relation to the protections offered under the *Property Rights Element*.
- ❖ The *Transportation Element* deals with the city's street network and addresses bicycle, pedestrian, transit, port, and aviation facilities. The policies of the *Transportation Element* ensure that roads are sited in the most appropriate areas possible and that these roads are designed in a manner which minimizes impacts to the surrounding land uses and promote a pedestrian-friendly community. The protections in the *Property Rights Element* must be considered as they relate to the adverse impacts of road and sidewalk construction on private property.
- ❖ The *Public School Facilities Element*, by virtue of the overall growth management strategies, analyzes the direction and intensity of future growth and development identified in the *Future Land Use Element* in siting future public school facilities consistent with the Future Land Use Map. The protections of the *Property Rights Element* must be considered in these decisions particularly as they relate to property acquisitions or adverse impacts from new schools on adjacent private properties.

- ❖ The *Intergovernmental Coordination Element* reviews and inventories intergovernmental communication as it relates to other elements of the City's Comprehensive Plan. It identifies and analyzes existing mechanisms of intergovernmental coordination while ensuring that the policies in the *Property Rights Element* are upheld between local and regional agencies.
- ❖ The *Capital Improvements Element* addresses the provision, timing, and financing of various capital improvements needed to maintain or achieve identified levels of service (LOS) to households for various kinds of public facilities.
- ❖ The *Historic Element* assists the City in meeting its goal to eliminate sub-standard housing conditions through conservation and rehabilitation of the current housing stock, which may include historic structures. It also enhances the City's strategy to preserve and protect Punta Gorda's locally designated historic districts, while still considering the policies in the *Property Rights Element*.

### III. LEGISLATION

The following is an assessment of existing regulations and programs that protect private property rights from governmental action without due process or just compensation.

#### Federal Regulations

##### *Constitution of the United States*

###### First Amendment

The First Amendment protects the freedom of speech and religion. It guarantees that property owners may exercise these rights on their property.

### Fifth Amendment

The Fifth Amendment provides the foundation for the protection of private property rights from arbitrary government action. The text of this Constitutional Amendment outlines the requirement that the government must provide “due process” under law and “just compensation” for the taking of private property for public use.

### Fourteenth Amendment

The Fourteenth Amendment makes the Bill of Rights (the first ten Constitutional amendments) applicable on state and local governments. It contains the Due Process Clause, which guarantees the following rights against the states: procedural protections, such as notice and a hearing before termination of entitlements; individual rights listed in the Bill of Rights, including freedom of speech, free exercise of religion, the right to bear arms, and a variety of criminal procedure protections; and fundamental rights that are not specifically enumerated in the Constitution.

## **State Regulations**

### ***Florida Statutes***

#### Section 163.3177(6)(i)1, Florida Statutes

In accordance with the legislative intent expressed in section 163.3161(10) and 187.101(3), *Florida Statutes*, 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 decision making.

#### Section 70.001, Florida Statutes

Florida Statutes section 70.001, also known as the Bert Harris Act or “Private Property Rights Protection Act”, provides a private cause of action when the existing use (or vested rights) of property is inordinately burdened by the Florida government, including the agencies thereof. Adopted in 2021, it was created to prevent the use of eminent domain for economic development by states, local governments, or the federal government. Economic development is defined as taking private property and transferring it to another private entity for commercial purposes, with some exceptions.

#### Sections 163.3220-163.3243, Florida Statutes

Sections 163.3220-163.3243, Florida Statutes, otherwise known as the “Florida Local Government Development Agreement Act”, grants assurance to a developer that upon receipt of his or her development permit or brownfield designation he or she may proceed in accordance with existing laws and policies. Adopted in 2022, the Legislature enacted the bill in an effort to reduce uncertainty in development approvals by authorizing local governments to enter into development agreements with developers. These agreements will encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development.

## **IV. INVENTORY AND ANALYSIS**

A *Property Rights Element* is required under the provisions of section 163.3177 (6) (i) 1, *Florida Statutes*. The inclusion of this element and continued adherence to best practices in the provision of public infrastructure and regulation of land

development to protect the public health, safety, and welfare will ensure implementation of these provisions.

With regards to the requirements for bona fide agricultural operations and farming, there are no lands in the city carrying an agriculture future land use designation. If the City proceeds to annex in portions of land suitable for agriculture this will be addressed.

## V. CONCLUSION

The City will continue to ensure that private property rights are clearly defined by the applicable provisions of the City Charter, Code of Ordinances, and the Comprehensive Plan. The goal, objectives, and policies of the *Property Rights Element* will provide the direction necessary to proactively address potential policy conflicts before private property rights are adversely impacted.

## VI. GOALS, OBJECTIVES, AND POLICIES

**Goal 12.1:** The City will ensure that the protection of existing private property rights will be considered in all local decision making in accordance with section 163.3177(6)(i)1, *Florida Statutes*.

**Objective 12.1.1:** The City of Punta Gorda will consider private property rights in local decision-making.

**Policy 12.1.1.1:** The City will ensure that private property rights are clearly defined by the goal, objectives, and policies of the Comprehensive Plan, City Charter, and Code of Ordinances.

*Measurement: Review of additions to policies in the Comprehensive Plan, City Charter, and the Code of Ordinances.*

**Policy 12.1.1.2:** The City of Punta Gorda recognizes the following rights which shall be considered in local decision-making:

- a) The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.
- b) 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.
- c) The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.

- d) The right of a property owner to dispose of his or her property through sale or gift.

*Measurement: Inclusion of a review of private property rights consideration in staff reports for any proposed changes to the Comprehensive Plan or City Code of Ordinances.*

**Objective 12.1.2:** The City of Punta Gorda will recognize and respect private property rights, and respect such rights and the impact upon them when preparing recommendations for land use decisions.

**Policy 12.1.2.1:** The City of Punta Gorda recognizes and respects private property rights, and existing entitlements, and shall continue to provide methods for the assertion of vested rights and other administrative remedies through the City of Punta Gorda, Code of Ordinances.

*Measurement: Inclusion of a review of existing entitlements and vested rights consideration in staff reports for any proposed changes to the Comprehensive Plan or City Code of Ordinances.*

**Policy 12.1.2.2:** The City of Punta Gorda shall provide appropriate notice to the property owner(s), the general public and owners of neighboring lands of all applications for amendments to the Comprehensive Plan, Zoning Map, and Land Development Regulations.

**Measurement:** *The number of notices provided to the property owners, general public and adjacent property owners addressing Comprehensive Plan and Zoning amendments and Land Development Regulation changes.*

**Policy 12.1.2.3:** If a property owner chooses to take advantage of the development alternatives within this Plan or the Land Development Regulations, then to the extent that there are master planning, design, infrastructure, open space, or other obligations that are required in order to gain development approval, the City of Punta Gorda shall enforce obligations. Landowners will have the option to participate in these programs if they desire to increase the densities and intensities allowed on their lands.

**Measurement:** *The number of applications submitted that include development alternatives.*