

ORDINANCE NO. 21 - 19

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF SANTA ROSA COUNTY; CREATING CHAPTER 10 OF THE SANTA ROSA COUNTY COMPREHENSIVE PLAN, A NEW ELEMENT OF THE COMPREHENSIVE PLAN TITLED "PROPERTY RIGHTS ELEMENT" ESTABLISHING GOALS, OBJECTIVES AND POLICIES TO ENSURE PRIVATE PROPERTY RIGHTS ARE CONSIDERED IN COUNTY DECISION-MAKING; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Art. 1, Section 2 of the Florida Constitution declares that all-natural persons are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; and

WHEREAS, the United States Constitution amendment V, the Florida Constitution Article I, Section 9, and, among others, chapter 70, 73 and 74 of the Florida Statute establish due process rights of property owners to ensure the protection of private property; and

WHEREAS, in furtherance of ensuring the protection of private property interests, the Community Planning Act, s. 163.3161(10), Fla. Stat. expressly establishes the intent of the Florida Legislature that all governmental entities the state recognize, and respect judicially acknowledged or constitutionally protected private property rights in its decision making; and

WHEREAS, all counties of the state are required to establish a comprehensive plan that shall provide the principles, guidelines, standards and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements (163.3177(1), Fla. Stat.); and

WHEREAS, the Florida Legislature establishes in general law specific mandatory and optional elements that a local government must include in its comprehensive plan such as a future land use element and a capital improvements element, see 163.3177, Fla. Stat.; and

WHEREAS, the statutes require a local government to base its elements upon relevant and appropriate data and an analysis by the local government that may include, but not be limited to, surveys, studies, community goals and vision, and other data available at the time of adoption; and

WHEREAS, during the 2021 Florida Legislative Session the Legislature adopted new legislation signed into law by the Governor that created chapter 2021-195, Laws of Florida and

WHEREAS, section 2 of chapter 2021-195, Laws of Florida adds an additional mandatory element to be included by local governments in its Comprehensive Plan known as the "Property Rights Element"; and

WHEREAS, the new element must be adopted by each local government 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, Fla. Stat. Currently, the County has a proposed plan amendment that was initiated after July 1, 2021, triggering the necessity of presenting the Board with a new Property Rights Element; and

WHEREAS, the Florida Legislature has set forth in chapter 2021-195 Laws of Florida a minimum standard statement of rights within the Legislation which may be taken verbatim and included into the Property Rights Element or may be altered so long as the element does not conflict with the statement of rights established by the Legislature; and

WHEREAS, County Staff and County Legal have met and drafted the Property Rights Element maintaining the standard statement of rights with additional clarification and explanation as to its applicability in the community, these additions do not conflict with the minimum standard statement of rights established by the Legislature; and

WHEREAS, the data upon which the County is basing this goals, objectives and policies of the Property Rights Element are United States Constitution amendment V, the Florida Constitution Article I, Section 9, and Chapter 2021-195 Laws of Florida; and

WHEREAS, the County now finds it in the best interest of the citizens of the County to create the Property Rights Element in the Santa Rosa County Comprehensive Plan.

NOW THEREFORE, be it ordained by the Board of County Commissioners of Okaloosa County, Florida as follows:

Section 1. The above recitals are hereby included and incorporated by reference as the findings of the Board in the adoption of the Real Property Element to the Santa Rosa County Comprehensive Plan.

Section 2. The Board hereby created a new Chapter 10 to the Santa Rosa County Comprehensive Plan titled “Real Property Element” as follows:

10.0 Property Rights Element Goals, Objectives and Policies

Goal 10.1: Ensure private real property rights are considered in local decision-making and that judicially acknowledged and constitutionally protected private property rights are respected through the inclusion of a Property Rights Element within the Santa Rosa County Comprehensive Plan. For purposes of the Property Rights Element, the term “property owner” or “real property owner” means the person who holds legal title to the real property that is the subject of and directly impacted by the action of the County in its local decision-making. The term does not include another governmental entity.

Objective 10.1.A: Implement and maintain mechanisms to ensure that private property rights are considered in local decision-making. Provided, nothing in this Property Rights Element is intended to grant additional rights not already in existence or to supersede existing rights in accordance with the law. Further, nothing herein shall require the county

to ascertain or determine the existence of any purported private interest in real property; those matters are within the jurisdiction of the circuit courts not the County (see s. 26.012(g), Florida Statutes (2021), and Art. V, Sec. 20(c)(3), Fla. Const. as may be amended from time to time).

Policy 10.1.A.1 When real property is the subject of an directly impacted by a proposed action being considered by Santa Rosa County, the County shall consider as part of its decision making, the following:

Policy 10.1.A.2: The right of a real property owner to physically possess and control his or her interests in the real property, including easements, leases, or mineral rights.

Policy 10.1.A.3: The right of a real 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 applicable federal, state law and local law.

Policy 10.1.A.4: The right of the real property owner to privacy and to exclude others from the property to protect the owner's legal interests in such property, subject to applicable federal, state and local law.

Policy 10.1.A.5: The right of the real property owner to dispose of his or her property interest through sale or gift.

Section 3. EFFECTIVE DATE. The effective date of this plan amendment, if the amendment is not timely challenged, shall be thirty-one (31) days after the state land planning agency notifies the County that the plan amendment package is complete. If timely challenged, this amendment shall become effective on the date the state land planning agency or the Administrative Commission enters a final order determining this adopted amendment to be in compliance. No development orders, development permits, or land uses dependent on this amendment may be issued or commence before it has become effective.

PASSED AND ADOPTED by a vote of 5 yeas and 0 nays and 0 absent of the Board of County Commissioners of Santa Rosa County, Florida, on the 28th day of October 2021.



**BOARD OF COUNTY COMMISSIONERS
SANTA ROSA COUNTY, FLORIDA**

By: _____

David C. Piech, Chairman

ATTEST:

Donald C. Spencer, Clerk of Court

I, Donald C. Spencer, Clerk of Court of Santa Rosa County, Florida, do hereby certify that the same was adopted and filed of record and sent electronically to the Secretary of the State of Florida, on this 4 day of November, 2021.




Donald C. Spencer, Clerk of Court