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MEMORANDUM

TO: City Commission

FROM: City Attorney's Office

DATE: October 4, 2022

RE: Analysis of Bert J. Harris, Jr., Private Property Rights Protection Act

The Fifth Amendment to the U.S. Constitution imposes a constitutional minimum that a government must pay “just compensation” whenever it lawfully takes private property for a public purpose. Similarly, Article X, Section 6 of the Florida Constitution requires “full compensation” for the public taking of private property. The taking of private property can involve anything from a permanent physical occupation to certain kinds of regulations that to a certain threshold impair or take certain private property rights. In addition, the Florida Legislature has afforded private property owners greater relief than required under the U.S. or Florida constitutions through its enactment of the Bert J. Harris, Jr., Private Property Rights Protection Act, found in Section 70.001, Florida Statutes (“Bert Harris Act”).

The Bert Harris Act, in pertinent part as it relates to the City of Gainesville, gives individual property owners the burden to prove that a law, rule, regulation, or ordinance of the City has left the property owner permanently unable to attain reasonable investment-backed expectations for: a) the actual present use of the property; or b) a reasonably foreseeable non-speculative future use that has created an existing fair market value in the property greater than the fair market value of the actual present use. The Bert Harris Act sets forth a specific timeline for providing notice of a claim, presentation of a settlement offer, and the filing of a lawsuit for compensation if the claim is not amicably resolved. Importantly, the Bert Harris Act allows only “as applied” challenges on an individual property case-by-case basis (meaning facial challenges based on the mere enactment of a new ordinance or regulation are not allowed), and only when the individual property owner presents the claim no more than one year after the City first applies a law or regulation to the property at issue. In addition, a claimant must be the present owner of the subject property to bring an action under the Bert Harris Act, and has no claim if the owner purchased the property with constructive knowledge of the applicable regulation or ordinance. To support alleged damages, the property owner must submit together with the claim a written appraisal report that demonstrates the loss in fair market value to the real property that has resulted from the government’s action.

In Florida, property owners generally do not have a vested right to any particular zoning, and a local government’s zoning power is a central aspect of exercising its home rule authority. However, there could be instances where, given the particular circumstances of a specific property

owner's situation in relation to the subject regulation or ordinance, a local government's action results in a private property owner submitting a claim under the Bert Harris Act. In such a case, the property owner and the government would follow the specific procedures provided in the Bert Harris Act and, if the claim is legitimate and there is a demonstrable impact to the specific circumstances of that property, the parties would work to amicably settle the matter without any monetary damages. Only if the matter could not be settled by the parties would the claim be resolved by a suit in circuit court.

In sum, the City's zoning discretion is fundamental to the City's home rule authority. Florida's Bert Harris Act should not be feared as an infringement or constraint on the City's zoning authority. Rather, the Act is a type of relief valve mechanism that provides an opportunity for the City to work together to find a tailored and mutually beneficial resolution with individual property owners who have provided demonstrable evidence that they would be exceptionally and inordinately burdened by a regulation or ordinance given their property-specific circumstances.