

REPORT OF THE PLANNING AND DEVELOPMENT DEPARTMENT

The Planning and Development Department hereby forwards to the Planning Commission, Land Use and Zoning Committee, and City Council its comments and recommendations on:

ORDINANCE 2009-429

AN ORDINANCE AMENDING SECTION 650.414 (MAINTENANCE OF THE COMPREHENSIVE PLAN FLUMS), PART 4 (AMENDMENTS TO THE COMPREHENSIVE PLAN), CHAPTER 650 (COMPREHENSIVE PLANNING FOR FUTURE DEVELOPMENT), *ORDINANCE CODE*, TO PROVIDE FOR COUNCIL REVIEW OF CORRECTIONS TO FLUMS OF COMPREHENSIVE PLAN; AND AMENDING SECTION 656.203 (AMENDMENTS TO ZONING ATLAS), SUBPART A (ESTABLISHMENT OF DISTRICTS, ZONING ATLAS), PART 2 (ZONING ATLAS AND DISTRICT BOUNDARIES), CHAPTER 656 (ZONING CODE), *ORDINANCE CODE*, TO PROVIDE FOR COUNCIL REVIEW OF CORRECTIONS TO ZONING ATLAS; PROVIDING AN EFFECTIVE DATE.

COMMENTS

I. GENERAL INFORMATION

The proposed legislation seeks to amend both Section 650.414 (Comprehensive Planning For Future Development) and Section 656.203(c) of the Zoning Code which makes provisions for the Planning Director to administratively make corrections to the Future Land Use Map Series and Zoning Atlas, when it has been determined that either a bona fide error has occurred and that the Zoning or Future Land Use Map does not agree with the latest enacted ordinance, or when a land use category boundary divides a lot of record at the time the boundary was established and makes impractical, the reasonable use of the lot.

This proposed change mandates that all corrections to the FLUM's or Zoning Atlas are required to be adopted by ordinance through City Council and that the corrections are only to occur on a semi-annual basis and travel concurrently with the transmittal stage of the Semi-Annual Comprehensive Plan Amendment Series. The Planning Department will also post signs consistent with the posting requirements for rezonings, and amendments to the future land use map however, no mailed notices will be required.

II. EVALUATION

A. The need and justification for the change

The need for this change is not justified. It has the effect of usurping the quasi-judicial rezoning process and procedural due process, as it would allow reversals of rezonings without any criteria for review and without proper notice to property owners. The Planning and Development Department averages anywhere between 20-30 FLUM's corrections and similar amount of Zoning Atlas corrections per year. These corrections are bona fide errors either in the reproduction or updating of the FLUM's or Zoning Atlas. These errors are typically discovered at the time of due diligence on a particular parcel, and are brought to the attention of the Planning Department by property owners, or prospective developers. It is unreasonable to require a property owner or developer to enter back into a quasi-judicial process in order to obtain the development rights they currently have. In addition, requiring that corrections are to be made only twice a year during the transmittal round of the semi-annual land use amendment series will have a detrimental effect on re-development and new development by adversely impacting the timing and project management of a development, as it will delay land transactions and financing, and will add an unwarranted substantial amount of risk for the developer.

Since adoption of the 2010 Comprehensive Plan, the Planning Department has made approximately 1,000 Land Use or Zoning Atlas corrections. In that time only one of the corrections has ever been challenged, and the validity of the correction that was made is debatable.

B. Summary of Bill

This bill amends sections 650.414 and 656.203, Ordinance Code, to require Council approval, by ordinance, to correct errors in the Comprehensive Plan Future Land Use Map Series (FLUMS) and in Zoning Atlas panels, respectively. It is provided that denial of a correction by Council does not affect the rights of anyone to seek a FLUMS amendment or rezoning through processes provided in the Ordinance Code.

Background Information: Maps and panels currently can be substituted to make error corrections without Council action. Upon the discovery of errors by the Director of Planning and Development, the Council Secretary makes substitutions for the FLUMS and the Director of Planning and Development makes substitutions of zoning panels. The proposed changes provide for substitution by the Director of Planning and Development for both FLUMS and Zoning Atlas panels, upon approval by Council.

C. The relationship of the proposed amendment to the Comprehensive Plan and the work of the Department with appropriate consideration as to whether the proposed amendment will further the purposes of the Zoning Code and Comprehensive Plan.

The proposed legislation does not further the intent of the Zoning Code and is inconsistent with the Goals, Objectives and Policies of the 2010 Comprehensive Plan. It is contrary to both due

process and the quasi-judicial rezoning process. The Comprehensive Plan and Zoning Code provide clear guidance as to how and who can make a correction to the FLUM's and Zoning Atlas. The Zoning Code already provides the ability for an appeal of an Administrative Decision in both Policy 4.1.1 of the Future Land Use Element and Section 656.109 of the Zoning Code.

C. Consistency with the Comprehensive Plan.

Ordinance 2009-429 is inconsistent with the Goals, Objectives and Policies contained within the 2010 Comprehensive Plan including the following:

Future Land Use Element Policy 4.1.1 The City shall make all existing and future Land Development Regulations consistent with the 2010 Comprehensive Plan, and all development orders consistent with those development regulations as per the timeframe provided for in Chapter 163 (Part II), F.S. Where a provision in the Land Development Regulations is in conflict with the adopted 2010 Comprehensive Plan, the provision in the Plan shall prevail. Land Development Regulations shall not permit any use(s) that is not permitted in the land use category depicted on the FLUMs.

Determination of consistency between the 2010 Comprehensive Plan and the Land Development Regulations will be made by the Director of Planning and Development. The decision made by the Director of Planning and Development may be appealed to the Council, who shall refer the matter to the appropriate committee of Council for a recommendation prior to acting upon the appeal.

Future Land Use Element Policy 1.1.1 The City shall ensure that all new development and redevelopment after the effective date of the 2010 Comprehensive Plan is consistent with the Future Land Use Map series, and textual provisions of this and other elements of the 2010 Comprehensive Plan, as provided in Chapter 163 (Part II), F.S.

Future Land Use Element Policy 4.1.9 The City shall establish an administrative procedure for appeals of decisions relating to comprehensive plan consistency and interpretation of the Future Land Use Map series. The procedure will include the Urban Affairs & Planning Committee of the City Council.

II. RECOMMENDATIONS

Based upon examination of the proposed ordinance with respect to the goals, objectives and policies of the 2010 Comprehensive Plan, and the intent of the Zoning Code, the Planning and Development Department finds that Ordinance 2009-429 is inconsistent with the Comprehensive Plan and does not further the intent of the Zoning Code. Therefore, it is the recommendation of the Planning and Development Department that Ordinance 2009-429 be **DENIED**

1 Introduced by Council Members Crescimbeni and Holt:
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4 **ORDINANCE 2009-429**

5 AN ORDINANCE AMENDING SECTION 650.414
6 (MAINTENANCE OF THE COMPREHENSIVE PLAN FLUMS),
7 PART 4 (AMENDMENTS TO THE COMPREHENSIVE PLAN),
8 CHAPTER 650 (COMPREHENSIVE PLANNING FOR FUTURE
9 DEVELOPMENT), *ORDINANCE CODE*, TO PROVIDE FOR
10 COUNCIL REVIEW OF CORRECTIONS TO FLUMS OF
11 COMPREHENSIVE PLAN; AND AMENDING SECTION
12 656.203 (AMENDMENTS TO ZONING ATLAS), SUBPART
13 A (ESTABLISHMENT OF DISTRICTS, ZONING ATLAS),
14 PART 2 (ZONING ATLAS AND DISTRICT BOUNDARIES),
15 CHAPTER 656 (ZONING CODE), *ORDINANCE CODE*, TO
16 PROVIDE FOR COUNCIL REVIEW OF CORRECTIONS TO
17 ZONING ATLAS; PROVIDING AN EFFECTIVE DATE.
18

19 **BE IT ORDAINED** by the Council of the City of Jacksonville:

20 **Section 1. Section 650.414 (Maintenance of the**
21 **comprehensive plan FLUMs) Amended.** Section 650.414 (Maintenance of
22 the comprehensive plan FLUMs), Part 4 (Amendments to the
23 Comprehensive Plan), Chapter 650 (Comprehensive Planning for Future
24 Development), *Ordinance Code*, is hereby amended to read as follows:

25 **CHAPTER 650**

26 **COMPREHENSIVE PLANNING FOR FUTURE DEVELOPMENT**

27 * * *

28 **PART 4**

29 **Amendments to the Comprehensive Plan**

30 * * *

31 **Sec. 650.414. Maintenance of the comprehensive plan FLUMs.**

1 ZONING CODE

2 * * *

3 PART 2

4 ZONING ATLAS AND DISTRICT BOUNDARIES

5 SUBPART A

6 ESTABLISHMENT OF DISTRICTS, ZONING ATLAS

7 * * *

8 **Sec. 656.203. Amendments to Zoning Atlas.**

9 * * *

10 (c) It is the intent of the Zoning Code that the Zoning
11 Atlas adopted by Section 656.202, shall accurately reflect the
12 location of district boundaries and the zoning classification of
13 all lands in effect on the date of their adoption. Whenever the
14 Director or his designee, discovers that, through a bona fide error
15 in the reproduction process, the Zoning Atlas or a revised panel
16 therein does not agree with the latest enacted ordinance related
17 thereto, he shall ~~correct the panel to accurately reflect the~~
18 ~~current zoning status of all land thereon. The corrected panel~~
19 ~~shall be substituted in the official Zoning Atlas by the Director~~
20 ~~or his designee without action by the Council being required.~~
21 request the Office of General Counsel to prepare a resolution
22 concerning the correction to be introduced by the appropriate
23 committee of Council. The corrected panel shall not be substituted
24 in the official Zoning Atlas by the Director or his designee unless
25 approved by the Council. In the event the Council denies the
26 request, such denial does not affect the rights of anyone to seek a
27 rezoning for the subject property through the process set forth in
28 Subpart C, Part 1 of the Zoning Code.

29 **Section 3. Effective Date.** This Ordinance shall become
30 effective upon signature by the Mayor or upon becoming effective
31 without the Mayor's signature.

