



Legislation Text

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LAND DEVELOPMENT CODE AMENDMENT - RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT (B)

Ordinance No. 0-07-118, Petition No. 103TCH-07PB

An ordinance of the City of Gainesville, Florida, amending Chapter 30, the Land Development Code, in accordance with the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc, and making other revisions for clarity and consistency; amending Section 30-51 to allow public schools as a use by special use permit in single-family residential districts rather than a use by right and removing public libraries as a use by special use permit in single-family residential districts; amending Section 30-52 to remove conditions on places of religious assembly and allow private schools as a use by right in RMF-5 and RC districts, and allow places of religious assembly and private schools as use by right in MH districts; amending Section 30-53 to remove conditions on places of religious assembly and allow private schools as a use by right in multiple family medium residential districts; amending Sections 30-54, 30-62, 30-63, 30-72, 30-75, 30-76, and 30-78 to allow places of religious assembly as a use by right in residential mixed use, automotive-oriented business, tourist-oriented business, agricultural, public services and operations, airport facility, and corporate park districts; amending Section 30-55 to remove conditions on places of religious assembly and allow private schools as a use by right in residential high density districts; amending Section 30-59 to allow public schools, other than institutions of higher learning, as use by special use permit in general office districts; amending Sections 30-61, 30-64, and 30-65 to remove references to places of religious assembly as a condition related to membership organizations; amending Section 30-68 to allow places of religious assembly as a use by right, and remove reference to places of religious assembly as a condition related to membership organizations in warehousing and wholesaling district; amending Sections 30-69 and 30-70 to remove membership sports and recreation clubs as a use by right in limited and general industrial districts; amending Section 30-77 to allow private schools and places of religious assembly as a use by right, and to modify the dimensional requirements in educational services district; amending Section 30-91 to modify dimensional requirements specific to places of religious assembly and requirements for places of religious assembly accessory uses, including day care centers, schools, food distribution centers for the needy, and residences for destitute people; amending Section 30-103 to modify dimensional requirements for private schools; inserting clarifying language in Section 30-110; amending Sections 30-251, 30-306, and 30-307 to remove references to places of religious assembly; amending Section 30-253 to remove landscape buffer requirements specific to places of religious assembly, and apply buffer requirements to all assembly uses; amending Section 30-332 to modify parking spaces required for places of religious assembly; providing directions to the codifier; providing a severability clause; providing a repealing clause; providing a retroactive schedule; and providing an immediate effective date.

The City Commission adopt the proposed ordinance as amended by recommendation of the Community Development Committee by: (1) correcting the scrivener's errors (see yellow highlighted text in the introductory sections of the proposed ordinance adopted on first reading and Exhibit A); (2) amending Section 30-91(a) by revising the minimum lot area requirements for places of religious assembly in single family districts as recommended by the Community Development Committee (see yellow highlighted text in Exhibit A, pg. 53, lines 7-9); (3) maintaining the current Land Development Code requirements, as codified in Section 30-91(c) and (d), for food distribution centers for the needy and residences for destitute people as accessory uses to places of religious assembly pending further study and recommendation by the Community Development Committee (see yellow highlighted text in Exhibit A, pg. 53-55); and (4) instructing the City Manager not to issue or deny any permits related to the Section 30-91(c) and (d) accessory uses until the Community Development Committee further studies

these uses and returns a recommendation to the City Commission.

STAFF REPORT

The proposed text changes to the Land Development Code are proposed to ensure that the City's Code is in accordance with the Religious Land Use and Institutionalized Persons Act (RLUIPA), as codified in 42 U.S.C.A. §2000cc. The Act specifies that "no government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a non-religious assembly or institution". The proposed changes amend the Code so that places of religious assembly are treated at least equal to non-religious assembly or institutional uses. Additional minor changes were made to ensure consistency throughout the Code. The significant changes include:

Allowing places of religious assembly as a use by right in most non-residential districts instead of by special use permit or not at all so that they are treated on equal terms as other similar assembly or institutional uses.

Allowing public schools as a use by special use permit instead of by right in single-family zoning districts so that all assembly or institutional uses are treated equally in that district.

Allowing public schools, private schools, and places of religious assembly as a use by right in all residential low, medium and high density residential districts so that they are all treated equally.

Deleting membership and assembly types use from the industrial districts, so that all such uses are equally prohibited.

Changing the requirements for landscaping, parking, gateway street district, and nature park district so that all membership and assembly uses are treated equally.

Changing the requirements for places of religious assembly, a "specially regulated use", so that they are at least equal to other assembly or institutional uses.

The Plan Board heard concerns expressed by Stuart Cullen and Andy Kaplan, regarding the new lot size requirements being placed on places of religious assembly in the RSF-1, RSF-2, RSF-3, and RSF-4 zoning districts. The new requirement would require places of religious assembly to meet the same lots size requirements as private and public schools. The Plan Board agreed with staff that given the built-out nature of single-family neighborhoods the requirement was appropriate to protect neighborhoods from the externalities of assembly type organizations. The Plan Board voted 6-0 to approve the petition.

Public notice was published in the Gainesville Sun on October 3, 2007. The Plan Board held a public hearing on October 18, 2007.

CITY ATTORNEY MEMORANDUM

The City Commission, at its meeting on November 26, 2007, approved the Petition No. 103TCH-07PB and authorized the City Attorney's Office to prepare the necessary ordinance amending the Land Development Code of the City of Gainesville.

The City Commission, at its meeting on January 14, 2008, approved Ordinance No. 0-07-118 by a vote of 6-1 on first reading, except that pages 53 and 55 of the Ordinance were amended (Sections 30-91(c) and (d) of the Code) to allow places of religious assembly to continue to operate food distribution centers for the needy and residences for

destitute people as accessory uses in single family districts upon the issuance of a permit by the city manager or designee rather than be required to obtain a special use permit for such accessory uses. The City Commission also directed the City Manager to clarify and publicize the criteria for such a permit. Lastly, the City Commission referred the Ordinance to the Community Development Committee to examine its particulars, including the lot size requirement for places of religious assembly in single family districts and the limit on the number of meals served by places of religious assembly operating food distribution centers as an accessory use, and requested the Community Development Committee to make recommendations as necessary at some future date. The referral of the Ordinance to the Community Development Committee was not intended to delay the adoption of the Ordinance.

In order to correct scrivener's errors in the directions to the codifier, this Office has made several technical revisions to the introductory sections of Ordinance No. 0-07-118 adopted on first reading. These technical revisions, highlighted in yellow in the proposed ordinance adopted on first reading and Exhibit A, do not substantively change the text of the Ordinance.

The City Commission, at its meeting on February 4, 2008, directed staff to send a letter to the Department of Justice regarding the status of the City's efforts to amend the Land Development Code to bring it into compliance with RLUIPA, referred Ordinance No. 0-07-118 to the Community Development Committee to address concerns raised by citizens, and continued second reading of Ordinance No. 0-07-118 until the Community Development Committee recommended any possible revisions to the City Commission, which was to be as soon as possible.

On February 11, 2008, the City Attorney and City Manager sent a letter to the Department of Justice summarizing the City's efforts to date. A copy of this letter is included in the backup materials to this agenda item as Exhibit B.

The Community Development Committee convened on February 14, 2008, February 26, 2008, March 7, 2008, and March 13, 2008 to consider Ordinance No. 0-07-118.

On February 26, 2008, the Community Development Committee voted to recommend to the City Commission the following revision to Ordinance No. 0-07-118 related to minimum lot area requirements for places of religious assembly in single family districts:

Minimum lot area shall be one (1) acre for each place of religious assembly with a building code capacity of one hundred (100) persons or less plus an additional one-half (1/2) acre for each additional fifty (50) persons of building code capacity.

On March 13, 2008, the Community Development Committee recommended that Ordinance No. 0-07-118 be returned to the City Commission with the Committee's minimum lot area recommendation so that the City could come into compliance with RLUIPA by March 24, 2008, the date of the next City Commission Meeting. The Community Development Committee further recommended that the City Commission allow the Committee to continue to consider and discuss the Ordinance provisions related to the place of religious assembly accessory uses of food distribution centers for the needy and residences for destitute people, as these provisions are not directly related to RLUIPA and may take significant time to address. The Community Development Committee recommended to the City Commission that the current Land Development Code requirements related to these two accessory uses remain unchanged and the City Manager not issue or deny any permits related to these two accessory uses until the Committee is able to further study these uses and return recommendations to the City Commission. The recommendations of the Community Development Committee would allow the City to bring its Land Development Code into compliance with RLUIPA as soon as possible and allow the Committee to have the time needed to address the concerns related to these accessory uses.

Commissioner Donovan supported the aforementioned recommendation of the Community Development Committee, except he no longer supported the minimum lot area previously approved by the Committee and

encouraged the adoption of a minimum lot area requirement based on a formula. If such a formula could not be developed and agreed upon by March 24, 2008, Commissioner Donovan supported keeping the current minimum lot area requirements for places of religious assembly in single family districts and the Community Development Committee further studying this issue. The Community Development Committee recommended that Commissioner Donovan's proposal be considered by the City Commission as an alternative to the aforementioned recommendation.

Exhibit A reflects the minimum lot area revision recommended by the Community Development Committee for places of religious assembly in single family districts. See Exh. A, pg. 53, lines 7-9. In addition, Exhibit A contains no changes to the current Land Development Code requirements for the place of religious assembly accessory uses of food distribution centers for the needy and residences for destitute people so that the Committee may continue to study these uses and make recommendations to the City Commission as to these uses at a later date. See Exh. A, pg. 53-55.