



MEMORANDUM

DATE: SEPTEMBER 28, 2012

TO: HOWARD BROWN, DIRECTOR, OPA-LOCKA COMMUNITY DEVELOPMENT DEPARTMENT; WILLIE LOGAN, PRESIDENT/CEO, OPA-LOCKA COMMUNITY DEVELOPMENT CORPORATION, INC.; AND REESE W. FAYDE, REESE FAYDE & ASSOCIATES

VIA: JAMES F. MURLEY, EXECUTIVE DIRECTOR

FROM: BOB CAMBRIC, DIRECTOR OF POLICY AND PLANNING

SUBJECT: CITY OF OPA-LOCKA ZONING ANALYSIS REPORT

The following is the Zoning Analysis Report for the City of Opa-locka. The Report outlines the Council's initial assessment of the zoning regulations that have been adopted by the City. We anticipate that this analysis will also assist us as we continue to work with City officials and staff, and with the public during the preparation of the City's Comprehensive Plan.

We look forward to continuing to assist you with your work with the City. Please contact me at bcambric@sfrpc.com or the number below if you have any questions.

Overview of Comprehensive Planning and Zoning in Florida

The State of Florida and its counties and cities have implemented various growth management laws and programs since 1972. Florida's growth management activities have been researched and reported extensively and with great clarity by academics as well as practitioners. The focus of this Report does not include adding to body of research, and, therefore, the SFRPC has elected to rely, where applicable, upon existing promulgations in lieu of independent representations.

According to David Powell, in his article entitled *Growth Management: Florida's Past as Prologue for the Future*:

In 1975, the legislature enacted the Local Government Comprehensive Planning Act. This measure greatly strengthened the general law on local comprehensive planning in several ways. First, it required all local governments to adopt a comprehensive plan. Second, it required those plans to identify future land uses throughout their respective jurisdictions and to adopt capital improvement programs to serve that future development. Third, it required all local governments to implement their plans with land development regulations such as subdivision regulations and zoning. Fourth, it required all development to be consistent with the adopted plan. The state could review and comment on local plans, but state comments were only "advisory." (p. 7)

The City Charter, specifically Part I, Article VIII (Planning, Zoning, Housing, Slum Clearance and Blighted Areas); Part II, Chapter 17 (Planning and Development); and Part II, Chapter 22 (Zoning) rely upon the 1975 Local Government Comprehensive Planning Act. It should be noted that the City's Charter relies upon Ordinance No. 81-13, adopted May 27, 1981, together with the sections of the Code of Ordinances adopted November 29, 1955, and Ordinance 86-8, as the enabling basis for its zoning. The City has adopted numerous, additional zoning ordinances since 86-8, which is also referred to as the Unified Land Development Code. The Charter, Code of Ordinances, 86-8 and its various amendments were reviewed in order to prepare this Report.

Since the initial passage of the 1975 Act, Florida has adopted two major revisions that direct the focus and scope of how counties and cities must regulate land use within their jurisdictions. They are the 1985 Local Government Comprehensive Planning and Land Development Regulation Act and 2011 Community Planning Act. The 1985 Act expanded upon its 1975 precursor's requirement for all counties and cities to adopt a comprehensive plan by mandating that the State Land Planning Agency adopt minimum criteria for the content of local comprehensive plans and then review, in conjunction with state and regional agencies, the adopted plans to, determine their consistency with state requirements. The 1985 Act required the local comprehensive plans to be consistent with the State Comprehensive Plan (Chapter 187, Florida Statutes [Fla. Stat.]), Rule 9J-5, Florida Administrative Code [F.A.C.], and the applicable Regional Policy Plan pursuant to Chapter 187.507, Fla. Stat. The comprehensive plans, upon being determined by the State Land Planning Agency as consistent and in-compliance would have the effect of law, if a challenge was not filed with 21 days.

The 1985 Act also required local governments to adopt within one year of submitting its revised comprehensive plan to "adopt or amend and enforce land development regulations that are consistent with and implement their adopted comprehensive plan" [§163.3202(1), Fla. Stat.]. It should be noted that zoning ordinances are inclusive to the term "land development regulations." Finally, the 1985 Act included a requirement that approved development must be approved only if adequate public facilities transportation, potable water, sanitary sewer, drainage, solid waste, recreation and open space, and, subsequently, public schools) would be

available to accommodate the impacts of that development. This requirement is commonly referred to as “concurrency”. The 1985 Act has been described as a “top-down” approach.

The 2011 Community Planning Act retained the requirements that all counties and cities adopt and maintain a comprehensive plan and land development regulations, but eliminated concurrency requirements for transportation and public schools as well as a determination of consistency by the State Land Planning Agency. The State Land Planning Agency no longer determines if a comprehensive plan or amendments thereto are in-compliance; however, it must notify the local government prior to adoption if the comprehensive plan or its amendments would form the basis for a challenge by the State Land Planning Agency. The 2011 Act placed the responsibility for determining compliance with the Act upon local governments and, therefore, is considered a “bottoms-up” approach.

With respect to land development regulations, the State requires that they, at a minimum, as promulgated in §163.3202(2), Fla. Stat., accomplish at the following:

- (2) Local land development regulations shall contain specific and detailed provisions necessary or desirable to implement the adopted comprehensive plan and shall at a minimum:
 - (a) Regulate the subdivision of land.
 - (b) Regulate the use of land and water for those land use categories included in the land use element and ensure the compatibility of adjacent uses and provide for open space.
 - (c) Provide for protection of potable water wellfields.
 - (d) Regulate areas subject to seasonal and periodic flooding and provide for drainage and stormwater management.
 - (e) Ensure the protection of environmentally sensitive lands designated in the comprehensive plan.
 - (f) Regulate signage.
 - (g) Provide that public facilities and services meet or exceed the standards established in the capital improvements element required by s. 163.3177 and are available when needed for the development, or that development orders and permits are conditioned on the availability of these public facilities and services necessary to serve the proposed development. A local government may not issue a development order or permit that results in a reduction in the level of services for the affected public facilities below the level of services provided in the local government’s comprehensive plan.
 - (h) Ensure safe and convenient onsite traffic flow, considering needed vehicle parking.
 - (i) Maintain the existing density of residential properties or recreational vehicle parks if the properties are intended for residential use and are located in the unincorporated areas that have sufficient infrastructure, as determined by a local governing authority, and are not located within a coastal high-hazard area under s. 163.3178.

Methodology

The SFRPC employed the following methodologies in its review and analysis of the City's Zoning Codes:

- Assessed Adopted Zoning Ordinances for Consistency with §163.3202, Fla. Stat., and other applicable statutes;
- Assessed Implementation Processes for Adopted Zoning Ordinances;
- Assessed Adopted Zoning Ordinances and Best Practices for Zoning Implementation; and
- Interviewed Local Government Staff Regarding Zoning Code Implementation.

Materials Reviewed

The SFRPC coordinated with the City's Community Development Department to obtain copies of zoning ordinances adopted by the City. It should be noted that the City does not regularly codify its zoning ordinances. It is recommended that the City establish Land Development Regulations and procedures to codify ordinances in a timely manner.

The following Table, List of City Zoning Ordinances Reviewed, provides an overview of the City documents reviewed for this Report. It also identifies challenges and opportunities that exist based on the content of the adopted Zoning Ordinances and the internal consistency of the ordinances and consistency with §163.3202, Fla. Stat., and other applicable legislation and Administrative Rules as well as where additional input is needed from City staff.

ORDINANCE NAME	ORDINANCE NUMBER	DATE OF ADOPTION	ORDINANCE SUMMARY	OPPORTUNITIES AND CHALLENGES
The Commission	City Charter, Part I, Article II, Sec. 9	November 29, 1955	Authorized City Commission to appoint members of the Planning Council and Zoning Board of Appeals	N/A
Planning, Zoning, Housing, Slum Clearance	City Charter, Part I, Article VIII, Sec. 95-122	November 29, 1955	Establishes Planning Council, Director of Planning, Zoning Board of Appeals, Comprehensive Planning, Platting and Subdivision, Zoning, and Slum and Blighted Areas procedures	<ul style="list-style-type: none"> • Sec 102 discusses legal effect of master plan but requirement for master plan (Sec. 101) repealed by Ord. No. 81-4 on 02 Nov 81) • Sec. 97 (a)(1) references master plan
Planning and Development	City Charter, Part II, Chapter 17	November 29, 1955	Establishes procedures for the Planning Council to submit actions to the City Commission; Establishes the Local Planning Agency (LPA) and its Procedures.	<ul style="list-style-type: none"> • Sec. 17-16 cites 1975 Comp Planning Act as its authority • Sec. 17-21 states LPA should follow 1975 Act requirements • Sec. 17-17 defines LPA as City Commission and Planning Council. This conflicts with Sec. 100
Buildings, Housing and Structural Regulations	City Charter, Part II, Chapter 7	November 29, 1955	Establishes Building Code standards, permit application fees, Building Board of Appeals (which is the Zoning Board of Appeals), flood damage protection standards, and telecommunications permitting procedures.	<ul style="list-style-type: none"> • Sec. 7-6 contains 16 pages of fees. The fee amounts should be reviewed
Opa-locka Zoning Ordinance	86-6			
Land Development Regulations	86-8, Article 1, Sections 1 & 2		Amended 86-6 to include a new title and additional definitions	<ul style="list-style-type: none"> • Correct Arterial definition; citation is 334.03(1) • Change County name from Dade to Miami-Dade County • Correct Local Street definition, citation is 334.03(14) • Correct Potable Water definition citation. DEP Rules numbers changed

ORDINANCE NAME	ORDINANCE NUMBER	DATE OF ADOPTION	ORDINANCE SUMMARY	OPPORTUNITIES AND CHALLENGES
Land Development Regulations	86-8, Article 3		Establishes zoning districts	<ul style="list-style-type: none"> The following listed districts are not represented by their own Article: Multiple Family Residential (R-3), Intensive Business District (B-3), and Industrial Park (I-3)
Land Development Regulations	86-8, Article 4.4		Establishes site plan review procedures	
Land Development Regulations	86-8, Article 4.5		Certificate of Occupancy	
Land Development Regulations	86-8, Article 4.6		Violations, Penalties, Other Remedies	
Land Development Regulations	86-8, Article 4.8		District Boundary Changes	
Land Development Regulations	86-8, Article 4.13		The Planning Council	<ul style="list-style-type: none"> B.7 allows posting at three conspicuous places in the city if a newspaper of general circulation is not published in the city. Seems to conflict with Florida requirements
Land Development Regulations	86-8, Article 4.14		The Zoning Board of Appeals	
Land Development Regulations	86-8, Article 4.15		Nonconforming Structure and Uses	<ul style="list-style-type: none"> Sec C and consistency with County sign ordinance
Land Development Regulations	86-8, Article 4.16		Developer Agreements	<ul style="list-style-type: none"> Agreement's maintenance responsibilities seem to end if the applicant no longer has 51% ownership
Land Development Regulations	86-8, Article 4.61		Concurrency Management System	<ul style="list-style-type: none"> Ensure standards are consistent with Comprehensive Plan

ORDINANCE NAME	ORDINANCE NUMBER	DATE OF ADOPTION	ORDINANCE SUMMARY	OPPORTUNITIES AND CHALLENGES
Land Development Regulations	86-8, Articles 6.1 - 6.13		Various Zoning Districts	<ul style="list-style-type: none"> 6.1 does not define accessory uses
Land Development Regulations	86-8, Article 6.14		Arabian Motif Architectural Regulations	
Land Development Regulations	86-8, Article 7		Landscape Provisions	
Land Development Regulations	86-8, Article 8		Off-Street Parking and Loading Regulations	
Land Development Regulations	86-8, Article 9		Advertising and Signs	<ul style="list-style-type: none"> Adopts County Sections 33-81 - 33.121.27. Still applicable?
Land Development Regulations	90-16	November 14, 1990		<ul style="list-style-type: none"> Amends 86-8 by adding Sec 5.20 (Surface Water Management) and Sec 5.30 (Floodplain Management)
Land Development Regulations	90-18	November 14, 1990	Amended 86-8 adding Sec 4.16 (Procedures for Submitting Developers Agreements)	<ul style="list-style-type: none"> The text in 90-18 has 12 factors for inclusion in the Agreement. The version of 86-8 provided contains 11
Land Development Regulations	91-5	May 8, 1991	Amended Sec 4.14 (c) to provide a time period for appeal of administrative decisions.	N/A
Land Development Regulations	93-7	June 23, 1993	Amended 86-8 to rezone a specific parcel	N/A
Land Development Regulations	01-10	July 11, 2001	Amends various portions of the zoning code to allow salvage business as Conditional Uses in I-23 (Liberal Industrial District)	N/A

ORDINANCE NAME	ORDINANCE NUMBER	DATE OF ADOPTION	ORDINANCE SUMMARY	OPPORTUNITIES AND CHALLENGES
Land Development Regulations	10-16	June 23, 2010	Amends 86-8 to provide a new section 5.14 regarding schools. Schools are classified as a special exception in R-2, R-3, R-5, B-0, B-1, and B-2. Also allows schools in other districts if it meets site plan approval guidelines in the ordinance	<ul style="list-style-type: none"> • May not address charter schools • May need to be revised based on the School ILA • May need to be amended in accordance with FDOE criteria for school approval and minimum lot sizes
Land Development Regulations	12-06	March 28, 1912	Amends 86-8 to create the Transit Oriented Development (TOD) Overlay	<ul style="list-style-type: none"> • TOD definition should be consistent with Comprehensive Plan policy language • Sections C & D, regarding where the overlay can be applied, may not be supportive of 23.4-acre property that is referenced in 12-1ESR • Creates a F.A.R. that is not contained in proposed Comprehensive Plan amendment (Sec F)

Assessment of Adopted Zoning Ordinances and Best Practices for Zoning Implementation

SFRPC staff researched various Best Practices in order to assess the City's adopted zoning ordinances. The two, primary references are the American Bar Association's Model; Statute on Local Land Use Planning Procedures and Florida Land Development Regulations (<http://floridaldrs.com/>). Florida Land Development Regulations is a website directed toward writers, administrators, users, and challengers of Florida land development regulations.

According to "Law of the Land", which is a blog on land use law and zoning:

On Monday, August 11, 2008, the American Bar Association, through its House of Delegates, adopted a Model Statute on Local Land Use Planning Procedures, advanced jointly by the State and Local Government Law Section and the Administrative Law Section, and co-sponsored by the Real Property Law Section and the Government and Public Sector Lawyers Division. The Model Act, intended to serve as a guide to state, local and tribal governments who adopt land use regulations, is intended to recommend appropriate administrative procedures that: (1) provide for the timely consideration of development permit applications; (2) provide a development permit review process for land-use decisions by local governments; (3) authorize a consolidated development permit review process for land-use decisions by local governments; (4) provide for the appointment of hearing examiners; (5) provide for a Land-Use Review Board; (6) authorize conditional uses, variances, and mediation in land development regulations; and (7) provide a judicial review process for land-use decisions. This effort was based upon Chapter 10 of the American Planning Association's Growing Smart Legislative Guidebook, which continues to serve as the resource for lawmakers and policymakers who are modernizing state and local planning and zoning enabling acts and laws. (<http://lawoftheland.wordpress.com/2008/08/17/american-bar-association-adopts-model-statute-on-local-land-use-planning-procedures/>)

SFRPC staff initial assessment of the City's zoning ordinances using the aforementioned Best Practices did not identify any construction issues with the City's Zoning Code. SFRPC staff reiterates that this report represents an initial assessment meant to trigger further local discussion of the issues and options.

Recommendations

While initial review has determined that the City's zoning ordinances address the necessary requirements of the ABA's Model Procedures and §163.3202(2), Fla. Stat., there are changes that should be addressed. These include a review of land uses and the implementing allowable uses based on the zoning code, the associated densities and intensities of the desired development, the review of the location of uses, and administrative procedures that will allow current and future property owners and developers a clear understanding of the development rules and guidelines.

The SFRPC also will be preparing a complete rewrite of the City's comprehensive plan. The comprehensive plan serves as a community's blueprint for growth and development, and the tenets of the revised plan will be vetted among elected and appointed officials, community-based organizations, property and business owners, and citizens. Since the land development regulations must be consistent with the comprehensive plan, additional recommended changes to the land development regulations may emerge.