



William D. Stokes
Direct (850) 208-7038
wstokes@clarkpartington.com
Licensed to Practice in Florida and Alabama

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VIA EMAIL ONLY–

gwingate@cityofpensacola.com; smyers@cityofpensacola.com; ljohnson@cityofpensacola.com;
bspencer@cityofpensacola.com; aterhaar@cityofpensacola.com; pcwu@cityofpensacola.com;
jcannada-wynn@cityofpensacola.com

Pensacola City Council
222 West Main Street, Third Floor
Pensacola, FL 32502

RE: Proposed Amendment to Land Development Code Section 12-2-10(C)(4)B)

Dear Council Members:

I represent Dr. Laura Hall and East Hill Animal Hospital/Pensacola Pet Resort Too regarding the proposed legislation (City File #18-00182) sponsored by Mayor Hayward to amend Land Development Code Section 12-2-10(C)(4)B), which governs certain land uses in the Old East Hill neighborhood-commercial zoning districts. This legislation is scheduled for a second public hearing and vote of the City Council at its regular meeting on July 19. For the reasons detailed below, I urge each of you to vote in favor of the proposed legislation as a fair, lawful, and efficient resolution of the issues existing under the current version of this Code section that have brought us before you in these proceedings.

I. The legislation is fair.

Dr. Hall owns and operates a veterinary clinic and adjoining pet boarding facility at 805 East Gadsden Street (Parcel ID No. 000S009025001084) in Old East Hill, located within the OEHC-1 zoning district. Dr. Hall is a conscientious business owner and neighborhood stakeholder who has always operated her businesses responsibly, including her boarding facility known as “Pensacola Pet Resort Too.” Her vet clinic and boarding operation are popular and well-known assets of the neighborhood. The facility is housed in a historic contributing structure that Dr. Hall purchased and renovated for her current uses in 2007. Since purchasing the property, she has grown her business at this location to more than 40 employees and 5,000 active clients with the support of the City government as well as the community at-large. Enclosed as **Appendix 1** is a set of photographs depicting the front exterior of Dr. Hall’s building from the street. These photos evidence the quality of her business operations and the well-maintained condition of the property.

We are supporting the proposed legislation because this amendment will clarify the scope of authorized outdoor uses within the OEHC-1 zoning district for animal hospitals and pet resorts under LDC Section 12-2-10. As you know, Dr. Hall received a Code citation earlier this year which charged her with violating the prohibition against “outside runs or exercise areas” in the current version of subsection 12-2-10(C)(4)B). The photo attached as **Appendix 2** depicts the facilities in the enclosed backyard of the property for which Dr. Hall was cited. The backyard contains two fenced areas of approximately 800 square feet each, where small groups of animals are taken outside for fresh air and to relieve themselves for brief periods of time under constant employee supervision. As Dr. Hall’s colleague, Dr. Miles McDaniel, discussed at the first public hearing of the proposed legislation in June, these facilities do not constitute “outside runs or exercise areas” as those terms are used in the veterinary profession. However, when the question of interpretation came up during the Code enforcement proceedings, the special magistrate suggested that these terms could be clarified in the Land Development Code to better define the nature of current authorized uses under subsection 12-2-10(C)(4)B).

Prior to the Code enforcement proceedings, Dr. Hall had been operating with the understanding that the backyard activities at 805 E. Gadsden complied with applicable City zoning regulations in accordance with a conditional use authorization that the City granted for her veterinary clinic in 2009. Dr. Hall opened her pet boarding operation at 805 E. Gadsden in 2007, prior to moving her vet clinic there. At that time, it appears the Planning Department considered pet boarding to be analogous to a “pet shop,” which has always been a permitted use in this zoning district. In 2008, City Council amended the Code section for OEHC-1 at Dr. Hall’s request to authorize animal hospitals in this district as a conditional use, resulting in the current version of LDC § 12-2-10(C)(4)(b). Dr. Hall sought and was granted conditional use approval for her veterinary clinic in 2009. Throughout this timeframe, the City was aware of Dr. Hall’s intended backyard activities as they are currently operated. These backyard activities are logically incidental to my client’s business operations.

Since 2009, Dr. Hall has operated continuously at 805 E. Gadsden with no complaints regarding her backyard activities until recently. Throughout that time, she has continued investing in the facility and her business operations there. At no time prior to the recent Code enforcement proceedings (and the differing interpretations ascribed to “outside runs or exercise areas” in those proceedings) did Dr. Hall believe that she was in violation of the LDC with respect to her backyard activities. In light of these circumstances, fairness dictates that the applicable Code section should be clarified as set forth in the proposed legislation that my client is supporting.

II. The legislation is lawful.

Certain members of the Old East Hill Property Owners Association have voiced objections to the proposed amendment and Dr. Hall’s business activities at 805 E. Gadsden. Over time, their objections have morphed from parking concerns (initially), then to dog barking, and now seem to be that no commercial activity whatsoever should be allowed in Old East Hill. These objections are misguided—The City’s Land Development Code and Comprehensive Plan both recognize that Old

East Hill is a mixed use neighborhood. The Escambia County Code already provides a remedy for excessive dog barking, and the parking issue was addressed by the City issuing Dr. Hall three parking licenses in 2009 for the adjacent rights-of-way.

Last month the Association's attorney, Erick Mead, provided a letter to Council protesting this legislation, in which he argues that the proposed amendment lacks sufficient "findings" by the Planning Board (which recommended approval of the legislation in April), and that the legislation is "unlawful per se" because it favors a particular property owner (Dr. Hall) and would "only be rewarding non-compliance with the Code." These arguments are without merit on the legal authority discussed below.

Council has broad discretion in considering amendments to the Land Development Code. This is a legislative function of local government that is subject to the "fairly debatable" standard of judicial review. See *Hart Properties, Inc. v. Metropolitan Dade County*, 346 So.2d 1199, 1200 (Fla. 3d DCA 1977) (upholding a zoning change enacted by a local government, and noting that the granting of a zoning change "is not unique or prohibited in American law."). Consequently, an amendment to a municipal zoning regulation must be upheld by a reviewing court unless the challenging party can show that the municipality acted arbitrarily or capriciously. See *Schumacher v. Town of Jupiter*, 643 So.2d 8 (Fla. 4th DCA 1994). "An arbitrary decision is one not supported by facts or logic. A capricious action is one taken irrationally, without thought or reason." *Board of Clinical Laboratory Personnel v. Fla. Assoc. of Blood Banks*, 721 So. 2d 317, 318 (Fla. 1st DCA 1998).

Here, the legislation sponsored by Mayor Hayward is more than sufficient under the applicable legal standard. As for the concern expressed by the Association's attorney that the amendment would allow Dr. Hall to avoid the imposition of code enforcement penalties for her backyard activities at 805 E. Gadsden, I will only note that obtaining a modification of applicable zoning criteria is a common and accepted method of curing a code violation charge. See also *City of New Smyrna Beach v. Board of Trustees of Internal Imp. Trust Fund*, 543 So.2d 824, 829 (Fla. 5th DCA 1989) (stating that "the mere change of statutory language does not necessarily indicate an intent to change the law for the intent may be to clarify what was doubtful and to safeguard against misapprehension as to existing law."). There is nothing improper about Mayor Hayward's request on behalf of Dr. Hall's business in this regard.

The proposed legislation is valid and lawful, and will withstand any judicial challenge.

III. The legislation is efficient.

The proposed amendment is an efficient remedy for the issues that have arisen under the current version of the Code section. Old East Hill is and always has been a mix of commercial and residential uses. The proposed amendment is consistent with the future land use policies stated in the City's Comprehensive Plan (Policy FLU-1.1.15), which recognizes that the Old East Hill preservation district "is an established business area, residential neighborhood and tourist attraction, containing historic sites and museums, a variety of specialty retail shops, restaurants,

small offices, and residences.” My client’s business at 805 E. Gadsden is located on the periphery of the Old East Hill districts, near the much more intensive commercial uses existing along the Cervantes Street corridor. A zoning map of Old East Hill with the location of 805 E. Gadsden noted is enclosed as **Appendix 3**.

If enacted, the proposed legislation will have the limited effect of amending a single subsection of LDC § 12-2-10 (subsection (C)(4)(b)), by removing the conditional use in this district for animal hospitals and veterinary clinics “with fully enclosed kennels and no outside runs or exercise areas”; and replacing this problematic language with a permitted use described in the legislation as follows: “Animal hospitals, veterinary clinics, pet resorts with fully enclosed kennels, no outside runs. Outside exercise areas permitted only if supervised and limited to five (5) or fewer animals.” This amendment would lend clarity to Code Section 12-2-10 and would be limited in application to the Old East Hill neighborhood-commercial districts only (OEHC-1, 2 and 3). The legislation presents no “slippery slope” concerns.

For the reasons outlined above, we respectfully request that you vote to approve the proposed Code amendment at the conclusion of the public hearing on Thursday. This legislation is fair, lawful, and efficient for all citizens of the City of Pensacola. Thank you for your consideration of this request. My client and I are available to answer any questions that Council may have.

With kind regards, I remain

Sincerely yours,



William D. Stokes

WDS/bfs

Enclosures(3)

Cc: Erica Burnett, City Clerk (by email – EBurnett@cityofpensacola.com)

APPENDIX 1





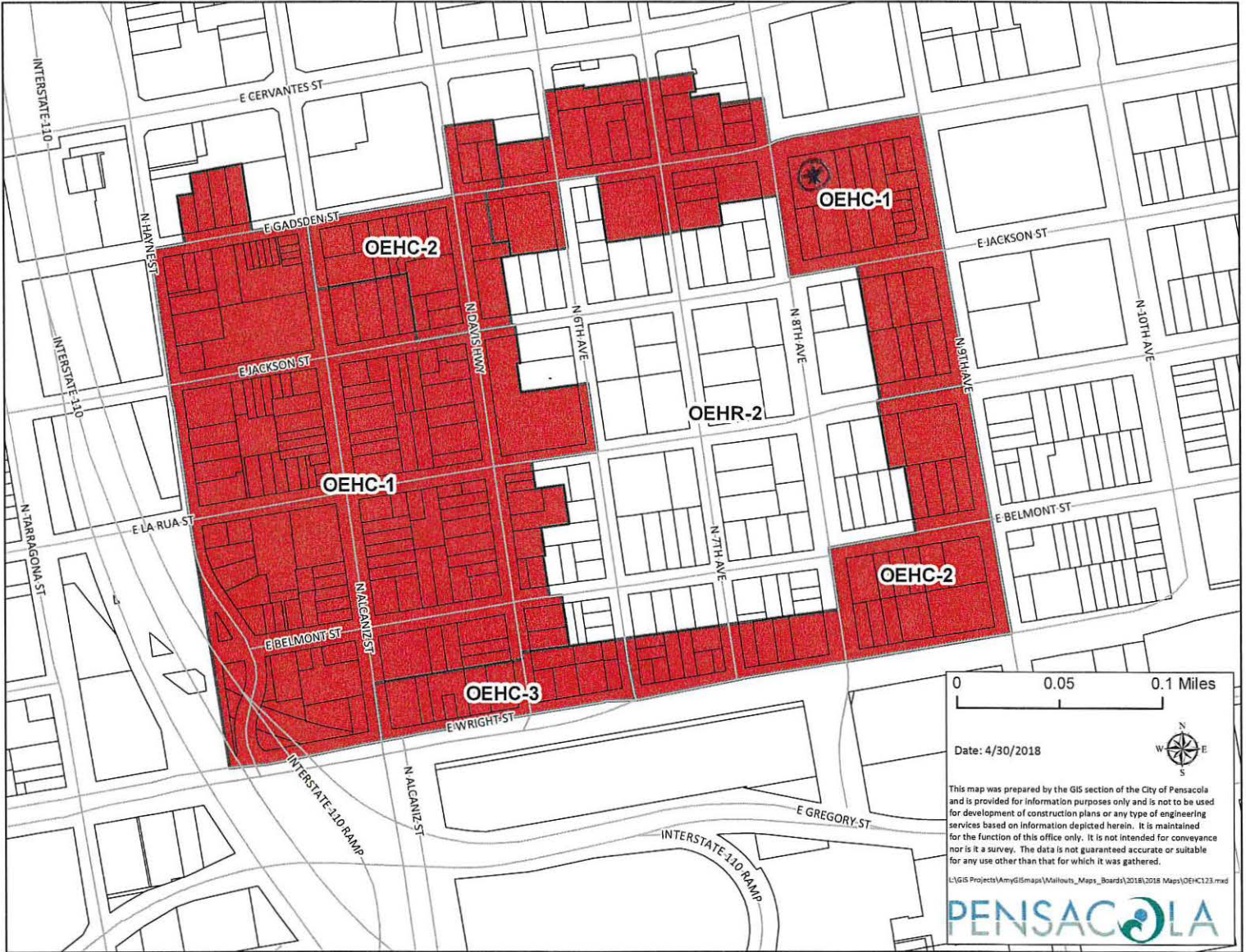




APPENDIX 2



APPENDIX 3



0 0.05 0.1 Miles

Date: 4/30/2018



This map was prepared by the GIS section of the City of Pensacola and is provided for information purposes only and is not to be used for development of construction plans or any type of engineering services based on information depicted herein. It is maintained for the function of this office only. It is not intended for conveyance nor is it a survey. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

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From: Barbara F. Sponburgh [<mailto:bsponburgh@clarkpartington.com>]

Sent: Tuesday, July 17, 2018 9:55 AM

To: Gerald Wingate <gwingate@cityofpensacola.com>; Sherri Myers <smyers@cityofpensacola.com>; Larry B. Johnson <ljohnson@cityofpensacola.com>; Brian Spencer <bspencer@cityofpensacola.com>; Andy Terhaar <aterhaar@cityofpensacola.com>; P.C. Wu <pcwu@cityofpensacola.com>; Jewel Cannada-Wynn <jcannada-wynn@cityofpensacola.com>

Cc: Ericka Burnett <EBurnett@cityofpensacola.com>; William Stokes <wstokes@clarkpartington.com>

Subject: City File # 18-00182; Proposed Amendment to Land Development Code Section 12-2-10(C)(4)(B)

Good morning:

Please see the attached letter and enclosures from Mr. Stokes. If you have any questions, please do not hesitate to contact Mr. Stokes.

Respectfully,

Barbara Sponburgh

Legal Secretary to William J. Dunaway and William D. Stokes

125 East Intendencia Street, Pensacola, Florida 32502

O: 850-208-7067 | bsponburgh@clarkpartington.com

