

ORDINANCE NO. 23-14

AN ORDINANCE OF THE TOWN OF REDINGTON SHORES, FLORIDA, REPEALING ORDINANCE 23-10 AS INCONSISTENT WITH THE TOWN COMPREHENSIVE PLAN; MAKING RELATED FINDINGS; PROVIDING FOR CODIFICATION, SEVERABILITY, AND FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Florida Statutes § 163.3194(1)(b), all local government land development regulations enacted or amended shall be consistent with the local government's adopted comprehensive plan, and in the event any land development regulation is inconsistent with an adopted comprehensive plan, the provisions of the comprehensive plan shall govern regarding any action taken in regard to an application for a development order; and

WHEREAS, the court in *Imhof v. Walton County*, 328 So.3d 32 (Fla. 1st DCA 2021) ruled that under the Community Planning Act, complete conformity with a local government's comprehensive plan is the floor, not the ceiling; and

WHEREAS, in Attorney General Opinion 85-56, the Florida Attorney General has opined that all land development regulations and actions, including permits for use of property issued by municipality, must be in accordance with its comprehensive plan; and

WHEREAS, the court in *Citrus County v. Halls River Development, Inc.*, 8 So.3d 413 (Fla. 5th DCA (2009), rehearing denied, review denied 23 So.3d 712, confirmed that zoning involves the exercise of discretionary powers within limits imposed by the local government's adopted comprehensive land use plan, and that a zoning action that is not in accordance with the comprehensive plan is unlawful; and

WHEREAS, in Attorney General Opinion 79-88, the Florida Attorney General opined that all development, including construction and building permits thereof, within a municipality undertaken subsequent to adoption of its comprehensive plan pursuant to the Local Government Comprehensive Planning Act must be in accordance with that plan; and, a municipality should move expeditiously to amend its existing zoning ordinances to conform with the land use elements of such adopted comprehensive plan; and

WHEREAS, the court in *Lake Rosa v. Board of County Com'rs*, 911 So.2d 206 (Fla. 5th DCA 2005), review denied 928 So.2d 334, confirmed that it is improper for a local government to issue any permit for use or development, where the permit would allow the material alteration of the use, density or intensity of the property, in a manner which is inconsistent with the adopted comprehensive plan; and

WHEREAS, on December 21st 2021, the Town retained a professional planning consultant to work with the Town to update the Town's LDC; and

WHEREAS, the Town's stated purpose of the LDC revision project was to remove or revise outdated, conflicting, inconsistent or unclear provisions, to provide for consistency with current state statutes, to update sign regulations consistent with federal court rulings, and to create

better organizational structure; and

WHEREAS, the exordial clauses and the project scope set forth in the contract stated that the project was for the consultant to review the Town's LDC and to prepare updates which would ensure consistency with Florida Statutes Chapter 163, make the LDC more logically organized, to remove outdated, preempted, or inconsistent provisions, and to make the LDC more user-friendly; and

WHEREAS, the Town Commission adopted Ordinance 23-10 on September 21st 2023; and

WHEREAS, the title of Ordinance 23-10 was:

AN ORDINANCE OF THE TOWN OF REDINGTON SHORES, FLORIDA, REVISING CHAPTER 90 OF THE TOWN CODE (THE LAND DEVELOPMENT CODE) TO REMOVE OR REVISE OUTDATED, CONFLICTING, INCONSISTENT OR UNCLEAR PROVISIONS, TO PROVIDE FOR CONSISTENCY WITH CURRENT FLORIDA STATUTES, TO UPDATE SIGN REGULATIONS CONSISTENT WITH FEDERAL COURT RULINGS, AND TO CREATE BETTER ORGANIZATIONAL STRUCTURE; MAKING RELATED FINDINGS; PROVIDING FOR CODIFICATION, SEVERABILITY, AND FOR AN EFFECTIVE DATE

and;

WHEREAS, while there were many iterations of the LDC revisions reviewed in workshops over time, certain final revisions to Ordinance 23-10 erroneously included edits to the allowable uses in the Town's RS-7, RS-10, RD-15, and RM-15 zoning districts even though changes to allowable uses was never included in the project; and

WHEREAS, the Town's existing Comprehensive Plan provides, in relevant part, that residences and residential areas be conserved, that existing residential areas shall be protected from the encroachment of incompatible activities, and that that residential areas shall be designated to protect property from excessive traffic and noise; and

WHEREAS, the Comprehensive Plan further provides that tourist accommodations shall be located in the Resort Facilities Medium land use category, with structures limited to restrictions applied to multi-family residential structures; and

WHEREAS, the Comprehensive Plan further provides that the Town's Land Development Code must contain provisions which, at a minimum, ensure the compatibility of adjacent land uses and provide for adequate and appropriate buffering, and encourage the maintenance of the Town's beach residential community atmosphere; and

WHEREAS, the Comprehensive Plan further provides that it is the Town's objective that the character of existing residential neighborhoods shall be maintained; and

WHEREAS, the edits to the allowable uses in the Town’s RS-7, RS-10, RD-15, and RM-15 zoning districts made in Ordinance 23-10, which would remove transient accommodations prohibitions in these districts, were clearly incompatible and inconsistent with the Comprehensive Plan provisions set forth above; and

WHEREAS, the title to Ordinance 23-10 did not provide notice to Town residents that any change in allowed or prohibited uses in any zoning district would occur due to the adoption of the Ordinance; and

WHEREAS, to the contrary, the title of the Ordinance and all representations of Town officials regarding the purpose and effect of the Ordinance were that the Ordinance’s purposes were to ensure the LDC was up to date with current provisions of state statutes, to ensure the Town’s sign code was compliant with prevailing federal caselaw, and to remove any redundant or inconsistent provisions of the LDC; and

WHEREAS, the court in *A.B.T. Corp., Inc. v. City of Fort Lauderdale*, 664 F.Supp. 488 (S.D. Fla. 1987), affirmed 835 F.2d 1439, confirmed that an ordinance, the title of which, which fails to provide adequate notice of what changes are being made to existing codes is void; and

WHEREAS, because Ordinance 23-10 erroneously included edits to the allowable uses in the Town’s RS-7, RS-10, RD-15, and RM-15 zoning districts; and

WHEREAS, those changes were not only unintended but were clearly inconsistent with the Town’s adopted Comprehensive Plan; and

WHEREAS, the title to Ordinance 23-10 did not provide notice to Town residents that any changes were being made to allowable uses in any Town zoning district; and

WHEREAS, The Town Commission therefore finds that the changes in the Town’s RS-7, RS-10, RD-15, and RM-15 zoning districts included in Ordinance 23-10 are void as inconsistent with the Town’s Comprehensive Plan, and that since the title to the Ordinance did not provide notice of any such changes, Ordinance 23-10 is void, and it must be repealed in its entirety.

NOW, THEREFORE BE IT ORDAINED by the Board of Commissioners of the Town of Redington Shores, Florida, that:

Section 1. Ordinance 23-10 is hereby repealed in its entirety.

Section 2. The LDC revision project is referred back to the Town Planning Board, which board shall ensure future revisions to the Town’s LDC are consistent with the Town’s comprehensive plan in all respects, and are compliant with Florida law.

Section 3. If any section, subsection, sentence, clause, provision or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the

remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the Board of Commissioners would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

Section 4. As it has been repealed, the Codifier shall ensure Ordinance 23-10 is not codified.

Section 5. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

ADOPTED ON FIRST READING on the 2nd day of November, 2023, by the Board of Commissioners of the Town of Redington Shores, Florida.

ADOPTED ON SECOND AND FINAL READING on the 8th day of November, 2023, by the Board of Commissioners of the Town of Redington Shores, Florida.

Attest:

MaryBeth Henderson, Mayor Commissioner

Town Clerk