



TO: Elizabeth Pauli, City Manager
FROM: Steve Victor, Deputy City Attorney
William C. Fosbre, City Attorney
COPY: City Council and City Clerk
SUBJECT: Ordinance – Amending Ordinance No. 28491 relating to zoning Correction and Detention facilities to clarify its application
DATE: August 7, 2019

SUMMARY:

Ordinance No. 28491 as codified contains a scrivener’s error in Exhibit A, page 4, of the Ordinance. On second reading, Council Member Ushka proposed an amendment to limit new or expanded correctional and detention facilities to the M-1 zoning district as it existed as of January 1, 2018. Council Member Ushka has confirmed that her intent was to apply the limitation to both correctional and detention facilities. However, the limitation was transcribed in only the detention facility box in the Ordinance table exhibit (Exhibit A on p. 4). This incomplete transcription has become the basis of an equal protection violation claim by the GEO Group in its federal lawsuit against the City. A clarifying amendment would address that claim.

STRATEGIC POLICY PRIORITY:

- Encourage and promote an efficient and effective government, which is fiscally sustainable and guided by engaged residents.

BACKGROUND:

Ordinance No. 28491 was passed on February 20, 2018, and became effective on March 2, 2018. After receipt of The GEO Group’s Complaint in this case, the City realized that the Ordinance contained a scrivener’s error in Exhibit A, page 4, of the Ordinance.

The amendment to limit new or expanded correctional and detention facilities to the M-1 zoning district as it existed as of January 1, 2018, was intended to apply to both correctional and detention facilities but was transcribed in only the detention facility box in the Ordinance exhibit (Exhibit A on p. 4).

Council Member Ushka, who made the motion to include that language, confirmed that it was her intent to treat correction and detention facilities identically. This was ultimately a documentation or scrivener’s error that appeared in the final form version of the ordinance.

ISSUE:

The transcription, and ultimate codification of Council Member Ushka’s amendment creates the appearance that the City Council intended to treat correction and detention facilities differently, when in fact, the Council intended all the zoning and regulations in Ordinance No. 28491 to apply equally to both.

ALTERNATIVES:

The City Council could choose not to adopt a clarifying amendment to Ordinance No. 28491, making all its provisions equally applicable to correction and detention facilities, as was the Council’s intent.

RECOMMENDATION:

It is recommended that the City Council adopt a clarifying amendment to Ordinance No. 28491, making all its provisions equally applicable to correction and detention facilities, as was the Council’s intent.

FISCAL IMPACT:

There is no fiscal impact.