PLANNING AND ZONING BOARD

STAFF REPORT

MEETING DATE: **September 18, 2017**

AGENDA NO: **VI. A**

AGENDA ITEM: **LDR Amendment – Repealing Chapter 9 - The Comprehensive Plan and amending Section 2.4.5(A) Amendments to the Comprehensive Plan to reference the Florida Statutes regarding the procedures for amending the Comprehensive Plan**

FILE: **2017-236-LDR-CCA**

ITEM BEFORE THE BOARD

The item before the Board is that of making a recommendation to the City Commission regarding Ordinance No. 38-17, a city-initiated amendment to the Land Development Regulations (LDRs) to repeal Chapter 9, "The Comprehensive Plan" in its entirety and to amend LDR Section 2.4.5(A) to reference Florida Statutes Section 163.3184 through 163.3253 regarding the procedures for amending the comprehensive plan.

BACKGROUND

Chapter 9, The Comprehensive Plan was created with the establishment of the Land Development Regulations in 1990 and provides general authority and direction regarding adoption and maintenance of the Comprehensive Plan. This section was consistent with the "Local Government Comprehensive Planning and Land Development Regulation Act" adopted by the State of Florida in 1985 and was codified as Florida Statutes Sections 163.3161-163.3243.

In 2011, the State of Florida House Bill 7207 was adopted and replaced the "Community Local Government Comprehensive Planning and Land Development Regulation Act" with the Community Planning ACT" codified in Florida Statutes Section 163.3161-163.3253. The purpose of this Act was to strengthen the existing role, processes, and powers of local governments in the establishment and implementation of comprehensive planning programs to guide and manage future development consistent with the proper role of local government.

The adopted State Law included the following changes:

- Removed the twice per year limitation on comprehensive plan amendments;
- Allowed local governments to follow an expedited state review process for comprehensive plan amendments including text and map changes except for small-scale plan amendment for which a separate small scale review process was established.
- Required state coordinated review for (i) areas of critical state concern, (ii) propose a rural land stewardship area, (iii) propose a sector plan or an amendment to an adopted sector plan, (iv) updating the comprehensive plan based on an evaluation and appraisal, (v)

propose a development that is subject to the state coordinated review process, (vi) new plans for newly incorporated municipalities.

LDR Section 9.2.1 currently states: *"A Plan Amendment shall only be initiated by formal action of the City Commission. Generally there shall be two amendments each year. One amendment shall be initiated in the early portion of each calendar year and shall include changes developed pursuant to Part V.B of the Comprehensive Plan. The other amendments shall be initiated in the month of June and shall focus upon individual development items and changes to the Future Land Use Map. The purpose and content and method of review of amendments to the Comprehensive Plan shall be made pursuant to F.S. 163.3187 and 163.3177(3)(b), as appropriate."*

The changes in Florida Statutes rendered the processes identified in Land Development Regulations inconsistent with the State Law. Excerpts of Florida Statutes Section 163.3184 regarding the expedited process for comprehensive plan amendments and Section 163.3187 regarding the process for adoption of small-scale comprehensive plan amendment are attached as Exhibit "A".

The proposed ordinance repeals in its entirety Chapter 9 "The Comprehensive Plan" and amends Section 2.4.5(A) "Amendments to the Comprehensive Plan" to reference to Florida Statutes Section 163.3184 through 163.3253 regarding the procedures for amending comprehensive plan.

ANALYSIS

Pursuant to **LDR Section 2.4.5(M)(1),** *amendments to the Land Development Regulations may be initiated by the City Commission, Planning and Zoning Board or City Administration; or an individual.*

The proposed amendment is a city-initiated text amendment to the Land Development Regulations.

Pursuant to **LDR Section 2.4.5(M)(5), Findings,** *in addition to LDR Section 1.1.6(A), the City Commission must make a finding that the text amendment is consistent with and furthers the Goals, Objectives and Policies of the Comprehensive Plan.*

The Comprehensive Plan cites under the "Procedures for Monitoring and Evaluation of the Plan",

"There are two ways in which provisions of the Comprehensive Plan (adoption document) can be altered. These are:

a. Pursuant to F.S. 163.3187 and,
b. Pursuant to F.S. 163.3177(3)(b).

The above procedures apply only to the document which is formally adopted by ordinance, by the City Commission and certified by the Florida Department of Community Affairs. The full elements and background data are not formally adopted and thus can be updated without being processed as an amendment. A Plan Amendment shall be initiated only by formal action of the City Commission.

a. F. S. 163.3187 - Places a limitation on general amendments, except those related to small scale development activities, to the effect of only two amendments per year. Additional

exceptions (to the number of permitted amendments) are allowed for emergencies (Subsection 1) and Developments of Regional Impact (Subsection 2). Each of the two general amendments may have more than one component and may address the Future Land Use Map and/or policies or objectives (i.e. text).

b. F.S. 163.3177(3)(b) - allows for the correction, updating, and modifications concerning costs; revenue sources; acceptance of facilities pursuant to dedications which are consistent with the Plan; or the date of construction of any facility enumerated in the Capital Improvement Element. However, such changes shall be accomplished by ordinance."

This section is inconsistent with the Florida Statutes and will be revised with the Always Delray Comprehensive Plan Update.

REQUIRED NOTICES

This is a city-initiated amendment to clarify procedures and no additional review is required. A notice of this item was published in the local newspaper. Comments submitted will be presented at the Planning and Zoning Board meeting.

ALTERNATIVE ACTIONS

A. Continue with direction.

B. Move a recommendation of approval to the City Commission of the amendment to Land Development Regulation to repeal in its entirety, Chapter 9 "The Comprehensive Plan" and to amend LDR Section 2.4.5(A) to reference Florida Statutes Section 163.3184 through 163.3253 regarding the procedures for amending the comprehensive plan by adopting the findings of fact and law contained in the staff report, and finding that the text amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in LDR Section 2.4.5(M).

C. Move a recommendation of denial to the City Commission of the amendment to Land Development Regulation to repeal in its entirety, Chapter 9 "The Comprehensive Plan" and to amend LDR Section 2.4.5(A) to reference Florida Statutes Section 163.3184 through 163.3253 regarding the procedures for amending the comprehensive plan by adopting the findings of fact and law contained in the staff report, and finding that the text amendment and approval thereof is not consistent with the Comprehensive Plan and does not meet the criteria set forth in LDR Section 2.4.5(M).

RECOMMENDED ACTION

Recommend approval to the City Commission of the amendment to Land Development Regulation to repeal in its entirety, Chapter 9 "The Comprehensive Plan" and to amend LDR Section 2.4.5(A) to reference Florida Statutes Section 163.3184 through 163.3253 regarding the procedures for amending the comprehensive plan by adopting the findings of fact and law contained in the staff report, and finding that the text amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in LDR Section 2.4.5(M).

Report prepared by: Jasmin Allen, Senior Planner
Attachments: Ordinance No. 38-17 and Exhibit A

EXHIBIT A

Florida Statutes Section 163.3184 Process for adoption of comprehensive plan or plan amendment.

(2) COMPREHENSIVE PLANS AND PLAN AMENDMENTS.—
(a) Plan amendments adopted by local governments shall follow the expedited state review process in subsection (3), except as set forth in paragraphs (b) and (c).
(b) Plan amendments that qualify as small-scale development amendments may follow the small-scale review process in s. 163.3187.
(c) Plan amendments that are in an area of critical state concern designated pursuant to s. 380.05; propose a rural land stewardship area pursuant to s. 163.3248; propose a sector plan pursuant to s. 163.3245 or an amendment to an adopted sector plan; update a comprehensive plan based on an evaluation and appraisal pursuant to s. 163.3191; propose a development that is subject to the state coordinated review process pursuant to s. 380.06; or are new plans for newly incorporated municipalities adopted pursuant to s. 163.3167, must follow the state coordinated review process in subsection (4).

(3) EXPEDITED STATE REVIEW PROCESS FOR ADOPTION OF COMPREHENSIVE PLAN AMENDMENTS.—

(a) The process for amending a comprehensive plan described in this subsection shall apply to all amendments except as provided in paragraphs (2)(b) and (c) and shall be applicable statewide.

(b)1. The local government, after the initial public hearing held pursuant to subsection (11), shall transmit within 10 working days the amendment or amendments and appropriate supporting data and analyses to the reviewing agencies. The local governing body shall also transmit a copy of the amendments and supporting data and analyses to any other local government or governmental agency that has filed a written request with the governing body.

2. The reviewing agencies and any other local government or governmental agency specified in subparagraph 1. may provide comments regarding the amendment or amendments to the local government. State agencies shall only comment on important state resources and facilities that will be adversely impacted by the amendment if adopted. Comments provided by state agencies shall state with specificity how the plan amendment will adversely impact an important state resource or facility and shall identify measures the local government may take to eliminate, reduce, or mitigate the adverse impacts. Such comments, if not resolved, may result in a challenge by the state land planning agency to the plan amendment. Agencies and local governments must transmit their comments to the affected local government such that they are received by the local government not later than 30 days after the date on which the agency or government received the amendment or amendments. Reviewing agencies shall also send a copy of their comments to the state land planning agency.
3. Comments to the local government from a regional planning council, county, or municipality shall be limited as follows:

a. The regional planning council review and comments shall be limited to adverse effects on regional resources or facilities identified in the strategic regional policy plan and extrajurisdictional impacts that would be inconsistent with the comprehensive plan of any affected local government within the region. A regional planning council may not review and comment on a proposed comprehensive plan amendment prepared by such council

unless the plan amendment has been changed by the local government subsequent to the preparation of the plan amendment by the regional planning council.

b. County comments shall be in the context of the relationship and effect of the proposed plan amendments on the county plan.

c. Municipal comments shall be in the context of the relationship and effect of the proposed plan amendments on the municipal plan.

d. Military installation comments shall be provided in accordance with s. 163.3175.

4. Comments to the local government from state agencies shall be limited to the following subjects as they relate to important state resources and facilities that will be adversely impacted by the amendment if adopted:

a. The Department of Environmental Protection shall limit its comments to the subjects of air and water pollution; wetlands and other surface waters of the state; federal and state-owned lands and interest in lands, including state parks, greenways and trails, and conservation easements; solid waste; water and wastewater treatment; and the Everglades ecosystem restoration.

b. The Department of State shall limit its comments to the subjects of historic and archaeological resources.

c. The Department of Transportation shall limit its comments to issues within the agency’s jurisdiction as it relates to transportation resources and facilities of state importance.

d. The Fish and Wildlife Conservation Commission shall limit its comments to subjects relating to fish and wildlife habitat and listed species and their habitat.

e. The Department of Agriculture and Consumer Services shall limit its comments to the subjects of agriculture, forestry, and aquaculture issues.

f. The Department of Education shall limit its comments to the subject of public school facilities.

g. The appropriate water management district shall limit its comments to flood protection and floodplain management, wetlands and other surface waters, and regional water supply.

h. The state land planning agency shall limit its comments to important state resources and facilities outside the jurisdiction of other commenting state agencies and may include comments on countervailing planning policies and objectives served by the plan amendment that should be balanced against potential adverse impacts to important state resources and facilities.

(c)1. The local government shall hold its second public hearing, which shall be a hearing on whether to adopt one or more comprehensive plan amendments pursuant to subsection (11). If the local government fails, within 180 days after receipt of agency comments, to hold the second public hearing, the amendments shall be deemed withdrawn unless extended by agreement with notice to the state land planning agency and any affected person that provided comments on the amendment. The 180-day limitation does not apply to amendments processed pursuant to s. 380.06.

2. All comprehensive plan amendments adopted by the governing body, along with the supporting data and analysis, shall be transmitted within 10 working days after the second public hearing to the state land planning agency and any other agency or local government that provided timely comments under subparagraph (b)2.

3. The state land planning agency shall notify the local government of any deficiencies within 5 working days after receipt of an amendment package. For purposes of completeness, an amendment shall be deemed complete if it contains a full, executed copy of the adoption ordinance or ordinances; in the case of a text amendment, a full copy of the amended language in legislative format with new words inserted in the text underlined, and words deleted stricken with hyphens; in the case of a future land use map amendment, a copy of the future land use map clearly depicting the parcel, its existing future land use designation, and its adopted designation; and a copy of any data and analyses the local government deems appropriate.

4. An amendment adopted under this paragraph does not become effective until 31 days after the state land planning agency notifies the local government that the plan amendment package is complete. If timely challenged, an amendment does not become effective until the state land planning agency or the Administration Commission enters a final order determining the adopted amendment to be in compliance.

163.3187 Process for adoption of small-scale comprehensive plan amendment.—

(1) A small scale development amendment may be adopted under the following conditions:

(a) The proposed amendment involves a use of 10 acres or fewer and:

(b) The cumulative annual effect of the acreage for all small scale development amendments adopted by the local government does not exceed a maximum of 120 acres in a calendar year.

(c) The proposed amendment does not involve a text change to the goals, policies, and objectives of the local government’s comprehensive plan, but only proposes a land use change to the future land use map for a site-specific small scale development activity. However, text changes that relate directly to, and are adopted simultaneously with, the small scale future land use map amendment shall be permissible under this section.

(d) The property that is the subject of the proposed amendment is not located within an area of critical state concern, unless the project subject to the proposed amendment involves the construction of affordable housing units meeting the criteria of s. 420.0004(3), and is located within an area of critical state concern designated by s. 380.0552 or by the Administration Commission pursuant to s. 380.05(1).

(2) Small scale development amendments adopted pursuant to this section require only one public hearing before the governing board, which shall be an adoption hearing as described in s. 163.3184(11).

(3) If the small scale development amendment involves a site within a rural area of opportunity as defined under s. 288.0656(2)(d) for the duration of such designation, the 10-acre limit listed in subsection (1) shall be increased by 100 percent to 20 acres. The local government approving the small scale plan amendment shall certify to the state land planning agency that the plan amendment furthers the economic objectives set forth in the executive order issued under s. 288.0656(7), and the property subject to the plan amendment shall undergo public review to ensure that all concurrency requirements and federal, state, and local environmental permit requirements are met.

(4) Comprehensive plans may only be amended in such a way as to preserve the internal consistency of the plan pursuant to s. 163.3177. Corrections, updates, or modifications of current costs which were set out as part of the comprehensive plan shall not, for the purposes of this act, be deemed to be amendments.

(5)(a) Any affected person may file a petition with the Division of Administrative Hearings pursuant to ss. 120.569 and 120.57 to request a hearing to challenge the compliance of a small scale development amendment with this act within 30 days following the local government’s adoption of the amendment and shall serve a copy of the petition on the local government. An administrative law judge shall hold a hearing in the affected jurisdiction not less than 30 days nor more than 60 days following the filing of a petition and the assignment of an administrative law judge. The parties to a hearing held pursuant to this subsection shall be the petitioner, the local government, and any intervenor. In the proceeding, the plan amendment shall be determined to be in compliance if the local government’s determination that the small scale development amendment is in compliance is fairly debatable. The state land planning agency may not intervene in any proceeding initiated pursuant to this section.

(b)1. If the administrative law judge recommends that the small scale development amendment be found not in compliance, the administrative law judge shall submit the

recommended order to the Administration Commission for final agency action. If the administrative law judge recommends that the small scale development amendment be found in compliance, the administrative law judge shall submit the recommended order to the state land planning agency.

2. If the state land planning agency determines that the plan amendment is not in compliance, the agency shall submit, within 30 days following its receipt, the recommended order to the Administration Commission for final agency action. If the state land planning agency determines that the plan amendment is in compliance, the agency shall enter a final order within 30 days following its receipt of the recommended order.

(c) Small scale development amendments may not become effective until 31 days after adoption. If challenged within 30 days after adoption, small scale development amendments may not become effective until the state land planning agency or the Administration Commission, respectively, issues a final order determining that the adopted small scale development amendment is in compliance.

(d) In all challenges under this subsection, when a determination of compliance as defined in s. 163.3184(1)(b) is made, consideration shall be given to the plan amendment as a whole and whether the plan amendment furthers the intent of this part.