Cover Memorandum/Staff Report

File #: 19-1136 **Agenda Date:** 12/3/2019 **Item #:** 8.A.

TO: **Mayor and Commissioners**
FROM: **Anthea Gianniotes, Development Services Director**
THROUGH: **Neal de Jesus, Interim City Manager**
DATE: **December 3, 2019**

ORDINANCE NO. 33-19: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES BY AMENDING SECTION 4.4.13. "CENTRAL BUSINESS (CBD) DISTRICT," SUBSECTION (H)(1) "RESIDENTIAL INCENTIVES", TO ALLOW CERTAIN LOTS LOCATED WITHIN THE WEST SETTLERS HISTORIC DISTRICT TO PARTICIPATE IN THE RESIDENTIAL INCENTIVE PROGRAM; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES. (SECOND READING)

Recommended Action:
Review and consider Ordinance No. 33-19 on Second Reading, a privately-initiated amendment to the Land Development Regulations Section 4.4.13(H)(1), "Residential Incentives," to allow residential incentives in the form of increased density on certain lots that do not contain contributing historic structures or non-contributing structures that are more than 30 years old within the West Settlers Historic District portion of the West Atlantic Neighborhood Sub-district.

Background:
Proposed Ordinance No. 33-19 is a privately-initiated amendment to Section 4.4.13(H)(1) of the City's Land Development Regulations (LDR) that govern the availability of residential incentives within the Central Business District (CBD) zoning district. The CBD has four sub-districts, each with customized regulations to reflect distinct areas of the downtown. Currently, the West Atlantic Neighborhood Sub-District allows 12 du/ac. Under the Residential Incentives, density may be increased in this Sub-district from 12 du/ac to 30 du/ac as an incentive for the provision of workforce housing; LDR Section 4.4.13(H)(1) excludes properties located within historic districts and sites that are individually designated from using residential incentives. The proposed amendment requests the provision of the incentive up to 20 du/ac for certain areas of the West Settlers Historic District that are also located within the CBD's West Atlantic Neighborhood Sub-district.

The reason historic properties were excluded from obtaining density increases was offering increased density on historic properties would increase the desirability of redeveloping or removing historic structures, which is counter to preservation goals. The boundary of the West Settlers Historic District includes land that is geographically representative of the historic settlement and neighborhood in addition to protecting sites with historic structures. The area that would be affected by the proposed land development regulation text amendment is located between West Atlantic Avenue and NW 1st Street. In addition to this locational limitation, additional criteria is required to use the incentive:

- The property does not contain a contributing structure.
  There are no contributing structures zoned CBD within the West Settlers Historic District and located between West Atlantic Avenue and NW 1st Street.

- The property does not contain a non-contributing structure that is at least 30 years old, from the original date of construction.
  This provision protects structures that are nearing an age that may indicate historic value. Three properties contain non-contributing structures located between West Atlantic Avenue and NW 1st Street that would not be eligible to use the residential incentive: 98 NW 5th Avenue (ca. 1972), Masonic Lodge (ca. 1978), and Donnie's Golden Spoon (ca. 1990). The other non-contributing structures located within the boundary that could be eligible to use the incentive if redevelopment was proposed are the Delray Beach Housing Authority building at 82 NW 5th Avenue (ca. 2017) and the Atlantic Grove development (ca. 2003).

- If the property is vacant, it has not contained a structure on the site for at least 15 years.
  This provision eliminates the potential for moving historic structures to "create" vacant parcels for redevelopment. The current vacant parcels within the eligible boundary area are located along NW 4th Avenue and surrounded on the north, south, and east sides by the Atlantic Grove Townhomes that were constructed in 2003. Aerial photos back through 1995 do not indicate the presence of any structures on those lots.

The balance of the properties within the area are zoned Community Facilities (CF), and therefore, are not eligible for the incentive. It is important to note that the existing Atlantic Grove development, which is located within the proposed Residential Incentive boundary area, received a density increase (to 16.54 du/ac) through a conditional use process that is no longer offered within the current Land Development Regulations. The current Atlantic Grove development is 4.54 acres and has a total of 75 residential units (townhomes and third floor apartments in the mixed-use buildings) plus retail and commercial uses along West Atlantic Avenue.

It is also important to note that any infill development proposal on the site will be processed as a Site Plan Modification and will ultimately be evaluated by the Historic Preservation Board at that time for compliance with all Land Development Regulations, including LDR Section 4.5.1. When Atlantic Grove was built, workforce units were offered for sale; the exact number of units required for the infill area will be determined at the time of Site Plan Modification evaluation within the context of the development as a whole. Workforce housing is deed restricted for 40 years and purchasers or renters must be income-qualified for the units.

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 privately-initiated by Timothy L. Hernandez on behalf of Atlantic Grove Partners, LLC.

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 following GOPs of the adopted Comprehensive Plan are applicable to the proposed amendment:

Future Land Use Policy A-2.3 Development of remaining vacant properties shall occur in a manner which is consistent with and complementary to adjacent development regardless of zoning designations. This policy shall be implemented through the review process associated with platting and site plans.

The proposed LDR amendment will allow for infill development that is consistent with the surrounding development, all of which is located within the West Settlers Historic District.

Future Land Use Policy A-4.1: Prior to approval or recommending approval of any land use or development application for property located within a historic district or designated as a historic site, the Historic Preservation Board must make a finding that the requested action is consistent with the provisions of Section 4.5.1 of the Land Development Regulations relating to historic sites and districts and the “Delray Beach Design Guidelines”.

A development application has not been filed at this time. If the proposed LDR amendment is approved, any development application on the parcels will be brought before the Historic Preservation Board for review.

Pursuant to **Future Land Use Element, Objective A-5**, the City shall maintain its Land Development Regulations, which shall be regularly reviewed and updated, to provide timely, equitable and streamlined processes including, but not limited to, building permit processes for residential developments and to accommodate mixed-use developments, and other innovative development practices.

The proposed amendment will allow density incentives for the provision of workforce housing in the downtown area. The amendment provides an equitable provision for the properties affected by the amendment by allowing the same incentive available on vacant parcels throughout the West Atlantic Neighborhood Sub-district. Since the amendment only affects vacant parcels or non-contributing structures that are less than 30 years old, contributing (historic) structures and potentially historic structures are not impacted by the amendment.

Future Land Use Policy C-1.5 The following pertains to the redevelopment of the West Atlantic Avenue Area: This area extends in a corridor along Atlantic Avenue eastward from I-95 to Swinton Avenue. The present land uses in this area include single family homes, duplexes, mini-parks, commercial uses along Atlantic Avenue and N.W. 5th Avenue, and scattered vacant parcels. The West Atlantic Avenue Redevelopment Plan was adopted by the City Commission on July 11, 1995. The plan establishes Future Land Use Map designations, zonings, special development standards, and design guidelines for the Redevelopment Area. Future development in the area must be in accordance with the provisions of the redevelopment plan.

The proposed amendment is consistent with the plan, which calls for mixed use buildings along Atlantic Avenue and limits commercial uses to locations within 150 feet of West Atlantic Avenue. The plan also recognizes the need to improve the availability of housing and to facilitate construction of affordable housing in the area.

Housing Objective A-9: The City shall support the conservation and rehabilitation of historically significant housing, especially where such housing is an identifying characteristic of a particular

neighborhood.
Housing Policy A-9.1: This objective will be implemented in accordance with the standards and criteria of Section 4.5.1 of the Land Development Regulations, Historic Preservation Sites and Districts.

The parcels specified in the amendment are either vacant or do not contain historically significant housing or structures; infill development will not remove historic resources and will be evaluated in regard to Section 4.5.1 when a Site Plan Modification application is made.

The **Planning and Zoning Board** reviewed the proposed LDR Amendments at its October 21, 2019 meeting. The board voted 5 to 2 (Casale and Howell dissented) to recommend approval with the amendment that the requested Residential Incentive for eligible properties within the West Settlers Historic District be limited to a maximum of 20 du/ac. The applicant agreed to the reduction, which is included in the draft ordinance.

Review of the proposed LDR Amendment by the following Boards was of the original draft, which had the Residential Incentive up to 30 du/ac.

The **Community Redevelopment Agency (CRA)** will review the proposed LDR Amendments at its November 19, 2019 meeting.

The **Downtown Development Authority (DDA)** reviewed the proposed LDR Amendments at its October 8, 2019 meeting; a recommendation of approval was made.

The **Historic Preservation Board (HPB)** considered the proposed LDR Amendments at its October 2, 2019 meeting; a recommendation of denial failed on a vote of 2 to 2. Note: Tie votes result in a denial of the application. In this case, the HPB was charged with providing a recommendation to the Planning and Zoning Board and the City Commission; the board's tie vote is reflected in the ordinance.

City Attorney Review:
Approved as to form and legal sufficiency.

Timing of Request:
Second Reading is anticipated for December 3, 2019.