

**ADMINISTRATIVE CODE  
BOARD OF COUNTY COMMISSIONERS**

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| <b>CATEGORY:</b><br>Development/Planning/Zoning          | <b>CODE NUMBER:</b><br>AC 13-6   |
| <b>TITLE:</b><br>Comprehensive Plan Amendment Procedures | <b>ADOPTED:</b><br>3/29/89   |
|  | <b>AMENDED:</b> 3/7/90; 5/16/90; 5/29/91;<br>1/22/92; 4/1/92; 7/8/92; 9/1/93; 2/16/94;<br>1/4/95; 7/24/01; 1/28/03; 2/1/11; 9/27/11;<br>3/5/13; 12/6/16; 11/7/17 |
|  | <b>ORIGINATING DEPARTMENT:</b><br>County Attorney/Planning   |

**PURPOSE/SCOPE:**

This administrative code establishes procedures for amendments to the Lee County Comprehensive Plan (the Lee Plan) including notice requirements and provisions for public participation during the amendment process.

**POLICY/PROCEDURE:**

A. AMENDMENT TYPES

1. "PRIVATELY REQUESTED AMENDMENT" means a proposed amendment requested by an entity other than the County. Privately requested amendments will follow the process described in section 163.3184, F.S.
2. "COUNTY INITIATED AMENDMENT" means a proposed amendment directed by an affirmative vote of three or more Commissioners. County initiated amendments will follow the process described in section 163.3184, F.S.

B. APPLICATION AND FEE REQUIRED FOR PRIVATELY REQUESTED AMENDMENTS

1. *Application form.* Applications for proposed amendments are available at the offices of Lee County Department of Community Development (the Department) and on the County's website at [www.leegov.com](http://www.leegov.com). No application may be accepted unless it is presented on the official form(s) provided by the County. An application for a proposed amendment must be accompanied by all documents, exhibits, and written analyses that the applicant intends to offer in support of the proposed amendment.
2. *Disclosure of interest.* An affidavit, signed by the property owner, or authorized representative, stating whether a Lee County employee or County Commissioner has an ownership interest in the property or any legal entity (corporation, company, partnership,

limited partnership, trust, etc.) that has an ownership interest in the property or that has contracted to purchase the property. Disclosure with respect to a beneficial ownership interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, whose interest is for sale to the general public, is exempt from the provision of this subsection.

3. *Surrounding property owners list, mailing labels and map.* The surrounding property owners list, mailing labels and map can be obtained from the Lee County Property Appraiser's office. Names and addresses of property owners will be deemed to be those appearing on the latest tax rolls of the County at the time of application. The applicant is responsible for the accuracy of the information provided. The following must be provided for all parcels within 500\* feet of the perimeter of the subject property or the portion thereof:

- a. A list of all surrounding property owners containing their name, address and strap number;
- b. Mailing labels with the surrounding property owners' name and mailing address; and
- c. A map referencing by number or other symbol the names on the surrounding property owners list.

\*In those instances where fewer than ten owners of property would be notified, the distance must be expanded to include all owners of property within 750 feet.

4. *Application submittal.* All applications and required materials must be submitted to the Department of Community Development, Planning Section. Upon receipt of the application, the Department will assign the application a case number and date-stamp it received.

5. *Filing fee.* All applications must be submitted in conjunction with the required filing fee as set forth in the Lee County External Fees and Charges Manual. A filing fee is not required for Community Plan Amendments submitted pursuant to AC13-3.

6. *Application review.* Upon receipt of the completed application, County staff will begin reviewing the application.

a. *Incomplete Application.* If the application and required materials have not been properly submitted, or are incomplete, the County will provide the applicant an insufficiency letter requesting the additional information needed in order to find the application complete. The applicant will have 90 calendar days from the date of the insufficiency letter to submit the additional required information.

b. *Complete Application.* If the application is found complete, a staff report will be prepared and the request will be scheduled for public hearing at the next available Local Planning Agency meeting after preparation of the staff report.

## C. PUBLIC HEARING AND ADOPTION PROCESS FOR ALL PLAN AMENDMENTS

1. *Staff report.* A written staff report regarding the proposed amendment(s) will be prepared by County Staff. The staff report will provide a substantive analysis of the proposed amendment(s) and will include a staff recommendation for consideration by the LPA and the Board. The staff report will be electronically distributed to the LPA a minimum of 7 calendar days before the publically noticed LPA meeting.
2. *Local Planning Agency (LPA) hearing.* At least one public hearing will be scheduled before the LPA. At the LPA Hearing, the LPA will review the proposed amendment(s) and the staff report and make a recommendation to the Board to transmit, transmit with specific modifications, or not transmit each proposed amendment. For small-scale development amendments the recommendation will be to adopt, adopt with specific modifications, or not adopt each proposed amendment.

In order to receive a favorable vote the majority of the quorum present must vote favorably. If there is a tie vote, the matter considered will be continued until the next scheduled meeting, unless a majority of the members present and voting agree by motion, before the next agenda item is called, to take some other action. Such other action may be moved or seconded by any member, regardless of his or her vote on any earlier motion.

The LPA is permitted to continue or defer the LPA hearing for a case to allow the submittal of additional testimony by the Applicant that is directly related to the LPA's review of the application. Unless agreed upon by the Applicant and County Staff, a case may only be continued or deferred by the LPA one time to the next scheduled LPA hearing. If the Applicant refuses to provide the additional information or the requested information is not provided at the next hearing, the deficient information or refusal to provide the additional information may be noted in the LPA's recommendation and staff report presented to the Board during the transmittal hearing.

The staff report will be modified to reflect the vote of each LPA member, along with a brief explanation of the basis of the LPA's vote. This report will be distributed to the Commissioners a minimum of 14 days before the scheduled Board hearing.

3. *Required Board hearings and State review process.* Plan amendments will be considered for adoption through the applicable state review process including public hearings before the Board of County Commissioners:
  - a. *Small-scale review process.* Plan amendments that qualify as a small-scale development amendment, defined in section 163.3187(1), F.S., may follow the small-scale review process set forth in section 163.3187, F.S.
  - b. *State coordinated review process.* Plan amendments that update the Lee Plan based on an evaluation and appraisal pursuant to section 163.3191, F.S. or that propose a development that qualifies as a development of regional impact pursuant to section 380.06, F.S., will follow the state coordinated review process set forth in section 163.3184(4), F.S.

c. *Expedited state review process.* All plan amendments not qualifying for the small-scale review process or requiring the state coordinated review process, will follow the expedited state review process set forth in section 163.3184(3), F.S.

4. *Decisions of the Board.* The decision of the Board of County Commissioners on a plan amendment is final and deemed rendered on the date the Board votes on the matter transmitting, denying, or approving the requested amendment. If there is a tie vote, the matter considered will be continued until the next regularly scheduled meeting for decisions on plan amendments by the Board, unless a majority of the members present and voting agree by motion, before the next agenda item is called, to take some other action. Such other action may be moved or seconded by any member, regardless of his or her vote on any earlier motion.

In accordance with section 163.3181(4), F.S., if an applicant's request for an amendment to the Lee Plan, which is applicable to the applicant's property, is denied by the Board, the applicant may request informal mediation or other alternative dispute resolution agreed upon by the applicant and the County to attempt to resolve issues raised regarding the proposed amendment. The costs of the mediation or other alternative dispute resolution shall be borne equally by the County and the applicant. A written request under this section must be submitted to the Chairman of the Board of County Commissioners within 30 days from the date the application was denied by the Board. Failure to make the request will be deemed a waiver of the opportunity afforded under section 163.3181(4), F.S. All public and private discussions in furtherance of settlement under the informal mediation or alternative dispute resolution process are inadmissible in subsequent litigation.

#### D. NOTICE REQUIREMENTS.

1. *Notice of Public Hearings for Lee Plan Amendments.* The notice and publication requirements in Chapter 125, F.S., must be met, except as provided for under section 163.3184(11), F.S. Any comprehensive plan amendments related to a proposed development of regional impact amendment are subject to the notice requirements set forth in section 380.06(6), F.S.
2. *Courtesy Notices.* The following notices are provided as a courtesy to the public and are not jurisdictional. Accordingly, the County's failure to post, mail, or to timely mail such notice or a property owner's failure to receive a mailed notice will not constitute a defect in notice or bar the public hearing from proceeding as scheduled. The following notices are required for all privately requested amendments to the Future Land Use Map.
- a. *Written Notice of Sufficiency.* Within 15 working days after finding an application sufficient for review, the County will send a courtesy notice via regular mail or electronic mail, when available, to all property owners included on the surrounding property owners list required as part of the application<sup>1,2</sup>, and to those homeowners associations or similar

<sup>1</sup> For purposes of notice to timeshare unit owners, notice will be sufficient if mailed to the timeshare association and not to the individual unit owners.

<sup>2</sup> In the event the surrounding property owners list contains more than 100 property owners, the courtesy notice will only be sent to the entities in the local community area where the amendment is proposed that has requested notice.

community organizations in the local community where the amendment is proposed that have requested notice<sup>3</sup>.

The notice will include the following:

- (1) the general location or street address (if available) of the subject property (a specific legal description is not required); and,
- (2) an area location map, at a suitable scale, depicting the subject property in relation to the surrounding neighborhood, sufficiently referenced to known major street or other physical boundaries in the surrounding area so as to be clearly identifiable to the general public; and,
- (3) the name and telephone number of the property owner or the property owners representative or agent; and,
- (4) the name and telephone number of the County staff person who can answer questions concerning the application; and,
- (5) the location where the application file is available for public inspection; and,
- (6) a brief description of the substantive request with sufficient detail to advise the public as to what the application may encompass.

- b. *Courtesy Posting.* At least 15 calendar days before the LPA hearing, the applicant must:
  - i. Post the sign supplied by the Department of Community Development. The sign must indicate the action requested by the applicant, the date of the LPA hearing, and the County assigned case number; and,
  - ii. Make a good-faith effort to maintain the sign(s) in accordance with the instructions supplied along with the sign(s) in places selected to provide maximum visibility and exposure to the public, and in readable condition until a final decision has been rendered on the requested action; and,
  - iii. Prior to the LPA hearing, submit an Affidavit attesting to the applicant's compliance with the posting requirements; and,
  - iv. The signs must remain in place until after the final Board adoption hearing on the application.
- c. *Website.* The County will post notice of pending amendments to the Future Land Use Map on the County website at least 7 calendar days before the LPA hearing on the proposed change.

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<sup>3</sup> The Department of Community Development will collect and maintain a list of interested homeowner associations and similar organizations for the local community areas in Lee County. The list will be for use in providing courtesy notice of pending future land use map amendments within the local community area of the County where the project is located. DCD is not required to solicit organizations to create local community lists.

d. *Written Notice of Public Hearing of the Board of County Commissioners.* The County will send by regular or electronic mail, when available, a notice of public hearing of the Board of County Commissioners to individuals requesting written notice of future hearings on the proposed amendment. Notices will be sent no later than 10 calendar days before the public hearing.

E. PUBLIC PARTICIPATION.

*Written comments.* The public may provide written comments on proposed amendments before the date of a public hearing at which consideration of the amendment is scheduled. Written comments may be submitted to the Planning Section of the Department of Community Development. Written comments may also be presented at any public hearing provided that the commentator supplies at least ten (10) copies of such comments to distribute to the LPA, or to the Board, whichever is applicable, the recording secretary and staff.

*Oral comments.* The public may provide oral comments on a proposed amendment at any public hearing on the amendment. The right to comment will be subject to reasonable time limits imposed by the Chairman. Comments that are irrelevant, immaterial, repetitive, spurious, defamatory, or out of order, will not be allowed.

F. EFFECTIVE DATE.

*Small-scale review process.* Plan amendments adopted under the small-scale review process will go into effect 31 days after adoption, unless challenged within 30 days of the adoption.

*State coordinated review process.* Plan amendments adopted under the state coordinated review process will become effective pursuant to the state land planning agency's notice of intent per section 163.3184(4)(e)4, F.S., unless challenged within 30 days of the adoption.

*Expedited state review process.* Plan amendments adopted under the expedited state review process will go into effect 31 days after the state land planning agency notifies Lee County that the plan amendment package is complete, unless challenged within 30 days of the adoption.

G. ADMINISTRATIVE CHALLENGES TO PLAN AMENDMENTS.

Affected persons must file a petition with the Division of Administrative Hearings pursuant to sections 120.569 and 120.57, F.S., to request a hearing to challenge the compliance of an amendment within 30 days of adoption.

H. WORKSHOPS.

The LPA or Board may conduct additional workshops or public hearings regarding a comprehensive plan amendment provided that the workshops or hearings are properly noticed.