AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE I, "COMPREHENSIVE PLAN" SO AS TO ADOPT NEW PROCEDURES FOR AMENDMENTS AND ADOPTING A PUBLIC PARTICIPATION PLAN.

This ordinance proposes to update the process and notification procedures in our Land Development Code for amendments to the Comprehensive Plan (last adopted in 1991) as well as adopting an updated Public Participation Plan (last adopted in 1989).

The staff had three goals in the preparation of this ordinance. Since the vast majority of comprehensive plan amendments involve a simultaneous change to the Comp. Plan future land use map and the Zoning map, the process and notification requirements need to be exactly the same. Second, staff wanted to adopt the State Statute requirements for Comp. Plan amendments, by reference, so that if the State changes those requirements, they automatically change for the City without having to amend our code. The City did not do that originally in 1991 and we now have outdated text that reflects the State Rules from 1991 and not from 2009. Lastly the staff wanted to clarify the exemptions for city-wide notices to pertain to annexations and the annual updating of the Capital Improvements Plan.

There have been significant changes to the procedures and public notice requirements for Zoning Code amendments (rezonings) since 1991. On May 8, 2006 the City Commission adopted Ordinance 2668-06 which instituted new application and public notice requirements (such as the city-wide notice). These are codified in Section 58-85 of the Zoning Code and this ordinance repeats those requirements.

The planning commission held a work session on this ordinance on May 20, 2009 together with the city attorney. The draft minutes to that work session are attached. The ordinance has been modified (see changes in blue) per that consensus.

In addition, the planning commission asked staff to prepare, for your consideration, an additional ordinance to expand the public notice requirements for annexations. This is the separate ordinance amending Chapter 2 or the city code (attached).

**STAFF RECOMMENDATION IS FOR APPROVAL**
Present: The meeting was called to order by Mr. Krecicki at 12:15 p.m. in the Commission Chambers of the Winter Park City Hall.

Present: Chairman Drew Krecicki, Patrick Doyle, Michael Dick, Carolyn Cooper. Vice-Chairman Rick Swisher and Sarah Whiting were absent. Staff: City Attorney Trippe Cheek Planning Director Jeffrey Briggs, Building Director George Wiggins, Sr. Planners Stacey Scowden and Lindsey Hayes, Planning Technician Caleena Shirley, and Recording Secretary Lisa M. Clark.

Mr. Briggs explained that the primary topic of today's meeting is to discuss the amendment ordinance to the comprehensive plan that deals with how the City will handle future comprehensive plan amendments (in terms of notice and procedures). He noted upcoming meetings (5/27 @ noon to discuss changes to the residential code and the change in time for the June 2nd meeting from 7 p.m. to noon).

With regard to the proposed ordinance staff had three goals in mind when writing this ordinance: (1) to have all mailed notices be the same as for rezonings; (2) to adopt by reference the state rules that apply to comprehensive plan amendments so the city rules and procedures are the same as the State's; and (3) to exempt comp. plan map amendments for annexations from the expensive city-wide notice.

The Board, with staff and city attorney entered into an extensive discussion regarding large scale versus small scale amendments, notice issues with regard to annexations (which are large scale amendments), whether or not the City should have more restrictive rules on Comp. Plan amendments than the State; the types of matters that will be large scale versus small scale amendments; and issues involving public notice and the number of public hearings.

Consensus of the Board was to: (1) leave the City rules and procedures for Comp. Plan amendments the same as the State; (2) exempt annexations from city-wide notice requirements; (3) add to the ordinance that all Comp. Plan amendments to be adopted must have two public hearings by the City commission and be by ordinance; and (4) staff will bring back a supplemental ordinance that will amend the annexation regulations from Chapter 2 of the City Code for the Planning Commission to decide if they would like to make a recommendation on that as well to require a city-wide notice at the beginning of the annexation process.

There was no further business, the meeting adjourned at 1:15 p.m.
ORDINANCE NO. _________

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 “LAND DEVELOPMENT CODE” ARTICLE I, “COMPREHENSIVE PLAN” SO AS TO ADOPT NEW PUBLIC NOTICE AND ADOPTION PROCEDURES FOR AMENDMENTS TO THE CITY OF WINTER PARK, COMPREHENSIVE PLAN, GOALS, OBJECTIVES AND POLICIES DOCUMENT, SUBSTITUTE FOR THE CURRENT AMENDMENT PROCEDURES, ADOPTING A 2009 PUBLIC PARTICIPATION PLAN, PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Florida Statutes require all local communities to adopt Comprehensive Plans pursuant to Chapter 163, Florida Statutes and Florida Administrative Rules in order to provide appropriate policy guidance for growth and development; and

WHEREAS, the Winter Park City Commission adopted the 1991 Comprehensive Plan on August 13, 1991 via Ordinance 1938 that included public notice and adoption procedures for comprehensive plan amendments; and

WHEREAS, the Winter Park City Commission has subsequently adopted a new Comprehensive Plan on February 23, 2009 via Ordinance 2762-09 and needs to update the public notice and amendment procedures as well as the Public Participation Plan.

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER PARK:

SECTION 1. That Chapter 58 “Land Development Code”, Article I “Comprehensive Plan” of the Code of Ordinances is hereby amended and modified by repealing and Section 58-6 “Amendments to the comprehensive plan” and adopting a new Section 58-6 “Amendments to the comprehensive plan” to read as follows:

Sec. 58-6. Amendments to the comprehensive plan.

(a) Amendments to the comprehensive plan shall at a minimum conform to the requirements as specified within Florida Statutes Chapter 163, Part II “Local Government Comprehensive Planning and Land Development Regulation Act” and Rules 9-J5/9-J11 Florida Administrative Code.

(1) A comprehensive plan text or map amendment may be proposed by the city commission or the planning and zoning commission or may be proposed by any individual,
corporation, partnership or other entity having a bona-fide interest in property either by
ownership or by standing under a contract to purchase such land. All comprehensive plan
text or map amendments must be made by ordinance. Applications shall be submitted on a
standard application form accompanied by all pertinent information which may be required
for proper consideration of the matter, along with payment of fees and charges as
established by the city commission. Applicants shall include prospective plans indicating
the desired development scenario proposed as a result of an approval per the plan
submission requirements established for conditional uses.

(2) All proposed comprehensive plan text or map amendments shall be submitted
to the planning and zoning commission for study and recommendation. The planning and
zoning commission shall study such proposals to determine:
   a. The need and justification for the change;
   b. When pertaining to the future land use designation of land, the effect of the
      change, if any, on the particular property and the surrounding properties;
   c. When pertaining to the future land use designation of land, the amount of
      undeveloped land in the general area and in the city having the same classification as that
      requested; and
   d. The relationship of the proposed amendment to the goals, objectives and
      policies text of the city's comprehensive plan, with appropriate consideration as to whether
      the proposed change will further, or at least not be contrary to the comprehensive plan.

(3) No recommendation for transmittal or adoption of any amendment to the
comprehensive plan shall be made by the planning and zoning commission until and
unless a public hearing has been held. In addition to the public notice requirements of
Florida Statutes Chapter 163, Part II “Local Government Comprehensive Planning and
Land Development Regulation Act” and Rules 9-J5/9-J11 Florida Administrative Code, the
city shall also conform to the following notice requirements. Notice shall be provided based
upon the type and size of the request as detailed below. In cases where requests are not
specifically indicated in this section, the planning director shall determine the most
appropriate level of public notice.

   a. For any proposed map amendment to the comprehensive plan involving land of
      less than one acre, notice of the public hearings for transmittal in the case of large scale
      amendments or for adoption in the case of small scale amendments shall be published in a
      newspaper of general circulation within the city at least 15 days in advance of the public
      hearing; written notice of the time and place of such meeting and the proposed action to be
      taken shall be posted upon the property and mailed to all owners of record of property
      within 1,500 feet of the property requested for map amendment at least 15 days prior to the
      public hearing. The public notice posted on the property shall be erected to be in full view
      of the general public on each street side of said land and shall be erected by the applicant.

   b. For any proposed map amendment to the comprehensive plan involving land of
      one acre or more or for any comprehensive plan text amendment to the goals, objectives
      and policies of the comprehensive plan shall require notice of the public hearings for
      transmittal in the case of large scale amendments or for adoption in the case of small scale
      amendments, to be published in a newspaper of general circulation within the city at least
      30 days in advance of the public hearings; written notice of the time and place of such
meeting and the proposed action to be taken shall be posted upon the property affected by
the map amendment and mailed to all owners of record of property within 1,500 feet of the
property requested for map amendment as well as mailed to all households as determined
from the listing of utility billing addresses within the entire city limits at least 30 days prior to
the public hearing. The public notice posted on the property shall be erected to be in full
view of the general public on each street side of said land and shall be erected by the
applicant. Any public notice required after the initial public hearing for which a city-wide
notice has already been mailed by the planning and zoning or city commission due to
tabling, continuance, postponement or any other action by the planning commission shall
revert to the 15 day notice so as to allow for requests to be heard at the next regular or
special meeting of the planning and zoning or city commission. This city-wide notice
mailing requirement shall not apply to any comprehensive plan text amendment that
changes the City’s five year capital improvements plan or narrative or other portions of the
capital improvements element required to be adopted annually in order to coincide with the
annual adoption of the city’s budget and capital improvements program and shall also not
apply to any comprehensive plan map amendment related to annexations that have been
previously approved pursuant to Chapter 171, Florida Statutes, as may be necessary to
update the city boundaries or to establish existing or future land use designations for
annexed properties as long as there is no change to the existing and future land use
designations in the Orange County Comprehensive Plan.

c. Said postings of properties for map amendments shall remain in place through-
out the public hearing process. The city shall monitor this posting and provide
replacements for any postings lost due to weather, vandalism, etc. However, the absence
of a posting due to these conditions beyond the control of the city or the applicant shall not
constitute a breach of this requirement provided a good faith effort is made to comply.

(4) The planning and zoning commission following their public hearing may recommend
approval, approval with conditions, denial or submit such request with no recommendation
to the city commission in the case of a tie vote. However, if the planning and zoning
commission makes no recommendation following two additional advertised public hearings
from the date of the initial public hearing, it shall be considered submitted to the city
commission without recommendation on the proposed comprehensive plan text or map
amendment. This provision shall not include any public hearing during which the applicant
requests that their application be tabled, postponed or continued or any public hearing
where the planning commission deems that the plans or other materials submitted do not
meet the application submission requirements, notice is deemed insufficient or any other
procedural deficiency.

(5) Upon the filing of the recommendations report by the planning and zoning commission
or upon failure to do so with respect to any proposed comprehensive plan text or map
amendment, the city commission shall proceed to hold one public hearing in the case of
transmittal of a large scale amendment or two public hearings on any the ordinance for
adoption in relation thereto to adoption of either small or large scale amendments, giving at
least 15 days notice of time and place of such hearings, which notice shall first be
published in a newspaper having a general circulation in the City of Winter Park, Florida.
(6) In case of a recommendation for denial, either to transmit or adopt, by the planning and zoning commission, such amendments shall not proceed or become effective except by the affirmative vote of four members of the city commission. In cases when the planning and zoning commission recommends approval of a comprehensive plan future land use map amendment or text amendment on a lesser portion of the property than originally requested or imposes conditions upon or limitations upon a recommendation for approval reducing the intensity or density of use of said property or text amendment, it shall require the affirmative vote of four members of the city commission to transmit or adopt such comprehensive plan future land use map or text amendment for a greater portion of the property or to increase the density or intensity of use above that recommended by the planning and zoning commission.

(7) Whenever the city commission has, by amendment, changed the comprehensive plan future land use designation of a property, the planning and zoning commission shall not consider any petition for the further amendment of any part or all of the same property for a period of one year from the effective date of the amendatory ordinance. Whenever the planning and zoning commission has taken action to recommend the denial of a petition for the change in the comprehensive plan land use designation of a property and that recommendation for denial has been approved by the city commission, or when the planning and zoning commission has recommended granting a petition for the change in the comprehensive plan future land use designation of a property and the city commission has reversed that recommendation and denied the petition, the city shall not:
   a. Consider any further petition for the same future land use designation of any part or all of the same property for a period of one year from date of such action by the city commission;
   b. Consider a petition for any other kind of future land use designation on any part or all of the same property of a period of one year from the date of such action by the city commission.
The time limits of these subsections may be waived by the affirmative vote of four members of the city commission, when such action is deemed necessary to prevent injustice or to facilitate the proper development of the city.

(8) The decision of the city commission on any comprehensive plan amendment shall be by ordinance. That decision may be made to affirm or deny the original request of the applicant or it may modify the request to approve a portion of the request or alternative version of comprehensive plan text or map amendment. The city commission may impose conditions upon the approval of a comprehensive plan amendment. Such conditions may restrict the range of permitted uses within a comprehensive plan designation and such conditions may also restrict or impose requirements upon the development or use of such land such as limitations on building size, height, setbacks or other site design or building design or use features.

(9) Whenever the secretary to the planning and zoning commission or city clerk has received a written request for a continuation, delay or postponement of a public hearing from an applicant after such public hearing has been duly advertised, the planning and zoning commission or city commission may grant the applicant's request. The commission shall reschedule the public hearing to any future scheduled meeting within the following six months. Such rescheduling shall meet with the approval of the applicant. The applicant
shall pay a second filing fee to cover necessary administration, public notice and other expenses. If, after the second public hearing has been duly advertised and the applicant again requests a delay, postponement or continuation, or if the applicant does not agree with the rescheduling of the public hearing within the six-month period, the planning and zoning commission or city commission shall duly act to deny the request of the applicant, and a new request for this property will not be accepted for a period of one year from the date of the second scheduled public hearing.

(10) Whenever an applicant submits plans as required by this section, only the plans submitted to the planning and zoning commission members prior to the public hearing for their review together with a staff report analysis and other pertinent information shall be the basis for action by the planning and zoning commission. If those plans are substantially modified then such application shall be postponed and re-advertised for a subsequent meeting. Similarly, when the planning and zoning commission makes a recommendation on an application pursuant to specific plans, and those plans are substantially modified for submission to the city commission public hearing, then the modified plans shall first be reviewed by the planning and zoning commission for recommendation before they are considered by the city commission for approval. The city commission shall not act on any application containing modified plans but shall refer the modified plans back to the planning and zoning commission, for subsequent review and recommendation unless such changes are in response to specific conditions of approval made by the planning and zoning commission.

SECTION 2. Pursuant to Section 163.3181 Florida Statutes, this ordinance adopts by the reference the City of Winter Park, Comprehensive Plan, Public Participation Plan attached hereto, dated February 23, 2009, replacing the existing Public Participation Plan adopted in 1989.

SECTION 3. This ordinance shall become effective immediately upon its final passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this _____ day of _________________, 2009.

__________________________
Mayor

ATTEST:

__________________________
City Clerk
ORDINANCE NO. __________

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 2 "ADMINISTRATION" SO AS TO ADOPT NEW PUBLIC NOTICE PROCEDURES FOR ANNEXATIONS TO THE CITY OF WINTER PARK.

WHEREAS, the Chapter 171, Florida Statutes provides requirements for public notice concerning annexations; and

WHEREAS, the City Commission desires to supplement and expand those public notice requirements to provide additional notice of the public hearings and referendums required for potential annexations; and

WHEREAS, the Winter Park City Commission has previously adopted referendum requirements for annexations that are more extensive than Chapter 171, Florida Statutes.

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER PARK:

SECTION 1. That Chapter 2 “Administration”, Section 2-1 "Municipal annexations" of the Code of Ordinances is hereby amended and modified by repealing and Section 2-1 and adopting a new Section 2-1 to read as follows:

Sec. 2-1. Municipal annexations; separate referendum required when proposed annexation exceeds a certain size.

(a) In the case of annexations pursuant to F.S. § 171.0413, following the final adoption of an ordinance of annexation by the city commission of the city, the ordinance shall be submitted to a vote of the registered electors of the area to be annexed. If the area to be annexed has a residential land use designation and if the proposed annexation ordinance would cause the total area annexed by the city pursuant to F.S. § 171.0413, during the 12-month period prior to adoption of the proposed annexation ordinance to exceed more than one percent of the total land area of the city or cumulatively to exceed more than one percent of the municipal population, the ordinance of annexation shall be submitted to a separate vote of the registered electors of the city and of the area proposed to be annexed. If the area to be annexed has a non-residential land use designation and if the proposed annexation ordinance would cause the total area annexed by the city pursuant to F.S. § 171.0413, during the 12-month period prior to adoption of the proposed annexation ordinance to exceed more than two percent of the total land area of the city or cumulatively to exceed more than two percent of the municipal population, the ordinance of annexation shall be submitted to a separate vote of the registered electors of the city and of the area proposed to be annexed.
(b) If the referendum is held only in the area proposed to be annexed and receives a majority vote, or if the ordinance is submitted to a separate vote of the registered electors of the city and the area proposed to be annexed and there is a separate majority vote for annexation in the city and in the area proposed to be annexed, the ordinance of annexation shall become effective on the effective date specified in the ordinance of annexation. If there is any majority vote against annexation, the ordinance of annexation shall not become effective, and the area proposed to be annexed shall not be the subject of an annexation ordinance by the city for a period of two years from the date of the referendum on annexation.

(c) For any annexation ordinance involving land of more than ______ acres, notice of the time and place of public hearings for the adoption of any such annexation ordinance shall not occur unless notice of such meeting and the proposed action is mailed to all households as determined from the listing of utility billing addresses within the entire city limits at least 30 days prior to the initial public hearing.

SECTION 2. This ordinance shall become effective immediately upon its final passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this ______ day of ________________, 2009.

_________________________  Mayor

ATTEST:

_________________________  City Clerk
City of Winter Park
Comprehensive Plan
Public Participation Plan

per

Chapter 163 Florida Statutes and
Rule 9J-5 Florida Administrative Code

February 23, 2009
CITY OF WINTER PARK PUBLIC PARTICIPATION PLAN

February 23, 2009

Introduction

This Public Participation Plan (2009) supplements and updates the Public Participation Plan adopted in 1989. In the preparation, notice and public participation process for all Comprehensive Plan amendments and updates, the City has conducted its public participation efforts pursuant to the 1989 plan. However, as new programs and procedures have been developed and utilized since that time this plan provides an update incorporating past, present and future actions at promoting broad public notification and participation.

Background Information

As mandated by the State of Florida Comprehensive Planning Regulation Act, Chapter 163 Florida Statutes and Rule 9J-5 Florida Administrative Code, the State Legislature has encouraged the fullest public participation in comprehensive planning efforts by local governments. The intent is defined in section 163.3181, “Public Participation in the comprehensive planning process” that “the procedures shall provide for broad dissemination of the proposals and alternatives, opportunity for written comments, public hearings as provided herein, provisions for open discussion, communications programs, information services, and consideration of and response to public comments.”

The City will follow the procedures set forth in Florida Administrative Code section 9J-5.004 Public Participation:

(a) Provisions to assure that real property owners are put on notice, through advertisement in a newspaper of general circulation in the area or other method adopted by the local government, of official actions that will affect the use of their property;

(b) Provisions for notice to keep the general public informed;

(c) Provisions to assure that there are opportunities for the public to provide written comments;

(d) Provisions to assure that the required public hearings are held; and

(e) Provisions to assure the consideration of and response to public comments.
Purpose

In addition to satisfying a requirement of the Florida Comprehensive Planning Law, this public participation plan is intended to serve two purposes. First, it will provide that information about the plan and planning process will be widely distributed to the community. The public will become aware of the comprehensive plan, the elements contained within it, and the proposed goals and policies through the array of techniques identified herein.

Secondly, it will ensure that there are ample opportunities for involvement and input from the public. This public participation process is designed to actively engage city residents, business owners, and community groups in shaping the comprehensive plan.

Public Participation Efforts – Outreach and Public Input

Ongoing public participation efforts are proposed to take place throughout the comprehensive planning process. These outreach efforts are designed to provide information to the public of the comprehensive plan requirements, progress/status of the plan, background information and drafts of the plan’s goals, objectives and policies. They will include:

Notice of All Comprehensive Plan Meetings. All meetings regarding the comprehensive plan update will be publicly noticed, with advertisements placed on quarter-page ads in the Orlando Sentinel. Notices are also posted on the city web site and at City Hall and the Winter Park Public Library.

Web site Posting. Information regarding comprehensive plan progress and upcoming meetings or other public participation opportunities will be posted and maintained on the city’s Web site. Drafts of the individual elements, as well as other pertinent information, will be posted and updated as progress is made on the plan. The web address is www.cityofwinterpark.org. Public access to the Internet is available at the Winter Park Public Library and Orange County Public Library for those residents without internet access.

Hard-Copy Posting. A hard copy of the draft and eventually the adopted document can be found in the Planning Department at 401 Park Avenue South, Winter Park, FL 32789 and at the Winter Park Public Library in the reference section.
Updates Included in the “City Update”. The city distributes to all its residents a bi-monthly update that summarizes projects and other “happenings” in the city. This is a great tool that will be used to inform the citizenry of comprehensive planning updates and meetings (information being placed is dependant on the print schedule of the “Update”).

City of Winter Park Board and Commission Participation. The following boards and commissions participate in the comprehensive planning process. Staff takes the pertinent sections of the plan to each of the boards and commissions and solicits comments from each of them. These boards and commissions are all made up of Winter Park residents.

Community Redevelopment Advisory Board
Environmental Review Board
Historic Preservation Commission
Lakes and Waterways Board
Parks and Recreation Board
Pedestrian and Bicycle Advisory Board
Planning and Zoning Commission (local planning agency)

Staff Presentations to the Community. Many of the other civic organizations request public presentations on the comprehensive planning process by staff. Some of the presentations done in the past were at the Rotary, Winter Park Chamber of Commerce and other civic organizations.

Audio Broadcasts of Public Meetings. All Planning and Zoning Commission meetings and City Commission meetings are broadcast through the Internet to anyone at home or work that are interested in the public meetings.

Public Notices. Mailed public notices shall be sent to owners of property pursuant to the notification requirements of the Land Development Code, Article I, “Comprehensive Plan”, Section 58-6 “Amendments to the Comprehensive Plan”.

**Winter Park’s Formal Adoption Process**

The city will follow the guidelines mandated by the State in Chapter 163.3184 *Process for adoption of comprehensive plan or plan amendment*. The notification requirements as summarized by the DCA from their website at:

[http://www.dca.state.fl.us/fdcp/dcp/Procedures/index.cfm#comp](http://www.dca.state.fl.us/fdcp/dcp/Procedures/index.cfm#comp)
MEMORANDUM

CITY OF WINTER PARK

TO: Jeff Briggs
   Director of Planning and Community Development

FROM: James E. "Trippe" Cheek, III, City Attorney

DATE: Wednesday, May 20, 2009

SUBJECT: Changing the statutory ceiling for small-scale Comprehensive Plan amendments

I have been asked whether the City of Winter Park can change its procedure for amending its comprehensive plan, where a specific state statute, Florida Statute § 163.3187 (2008), sets forth the procedures a municipality must follow in amending its comprehensive plan; more specifically, the question is whether the procedures set out in § 163.3187 preempt a municipality's authority to legislate on the subject, or otherwise preclude the municipality from creating rules which differ from state law.

Article VIII, § 2(b) of the Florida Constitution provides that municipalities “shall have governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services.” This broad power granted to municipalities by the constitution embodies the concept that both the municipality and the state may legislate upon the same subject matter. Florida League of Cities, Inc. v. Dept. of Ins. and Treasurer, 540 So.2d 850, 856 (Fla 1st DCA, 1989). However, a municipality’s authority is limited in that it may not legislate on any subject where the constitution or state law has preempted that subject. § 166.021(3)(c), Fla. Stat. (2008).

Moreover, even in regard to an area not preempted by state law, a municipality may not enact an ordinance that is in conflict with state law. W. Palm Beach Ass’n of Firefighters, Local Union 727 v. Bd. Of City Comm’rs of the City of W. Palm Beach, 448 So.2d 1212 (Fla 4th DCA, 1984). “If conflict arises, state law prevails.” City of Miami Beach v. Rocio Corp., 404 So.2d 1066, 1070 (Fla 3d DCA, 1981). “An ordinance which supplements a statute's restriction of rights may coexist with
that statute, Eliott Advertising Co. v. Metropolitan Dade County, Jordan Chapel Freewill Baptist Church v. Dade County, 334 So.2d 661 (Fla. 3d DCA 1976), whereas an ordinance which countermands rights provided by statute must fail. Scavella v. Fernandez, 371 So.2d 535 (Fla. 3d DCA 1979).” Id.

Whether the City of Winter Park can change the procedures it follows in amending its comprehensive plan depends in part on whether Section 163.3187 preempts municipal legislation on the subject, as state law has been held in other cases not to preempt municipal authority unless that intent is clear. Section 163.3187 does not seem to expressly state a legislative intent to preempt a municipality's authority to legislate over its comprehensive plan, so there is an argument here that the doctrine of preemption may not apply.

However, the City is barred from lowering the acreage limitation allowed for "small scale" amendments if such a change would be in conflict with state law. Section 163.3187(1)(c) provides that a small scale development amendment may be adopted only under the conditions set forth in the statute. Section 163.1(1)(c) 1. sets forth the conditions necessary for a municipality to amend its comprehensive plan that involves the use of 10 acres or fewer.

The precise issue is whether changing the acreage limitation for a small scale development amendment conflicts with the statute. It would appear quite possible that a court would conclude that any change to the procedures set forth in the statute would controvert the statute’s language that a small scale development amendment may be adopted only under the conditions that statute sets forth.

Based on the foregoing analysis, I cannot assure the City that an ordinance lowering the ceiling for the size of small scale development amendments would be upheld by the courts. The 10-acre ceiling is specifically set forth in § 163.3187(1)(c)1. and lowering the number of acres would appear to directly conflict with the statute. Property owners affected by such a lowering of the ceiling would no doubt claim that the City was taking away a right provided to them by state law.