

ORDINANCE NO. 23-22

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH CODE OF ORDINANCES, BY AMENDING CHAPTER 4, "ZONING REGULATIONS," ARTICLE 4.3, "DISTRICT REGULATIONS, GENERAL PROVISIONS," SECTION 4.3.3, "SPECIAL REQUIREMENTS FOR SPECIFIC USES," RENAMING AND UPDATING SUBSECTION (K), "HOME OCCUPATIONS" AND REPEALING SUBSECTION (KK), "HOME TUTORIAL SERVICES," TO BRING REGULATIONS GOVERNING HOME-BASED BUSINESSES INTO COMPLIANCE WITH CB/HB 403, WHICH AMENDS S. 559.955, F.S. TO LIMIT THE POWER OF MUNICIPAL GOVERNMENTS TO REGULATE SUCH USE; AMENDING ARTICLE 4.4, "BASE ZONING DISTRICT," SECTION 4.4.1, "AGRICULTURE ZONE DISTRICT (A)," SECTION 4.4.2, "RURAL RESIDENTIAL (RR) DISTRICT," SECTION 4.4.3, "SINGLE FAMILY RESIDENTIAL (R-1) DISTRICTS," SECTION 4.4.5, "LOW DENSITY RESIDENTIAL (RL) DISTRICT," SECTION 4.4.6, "MEDIUM DENSITY RESIDENTIAL (RM) DISTRICT," SECTION 4.4.7, "PLANNED RESIDENTIAL DEVELOPMENT (PRD) DISTRICT," SECTION 4.4.13, "CENTRAL BUSINESS (CBD) DISTRICT," SECTION 4.4.17, "RESIDENTIAL OFFICE (RO) DISTRICT, AND SECTION 4.4.24, "OLD SCHOOL SQUARE HISTORIC ARTS DISTRICT (OSSHAD)," TO UPDATE THE TERMINOLOGY RELATED TO HOME-BASED BUSINESSES; AND AMENDING ARTICLE 4.6, "SUPPLEMENTAL DISTRICT REGULATIONS," SECTION 4.6.7, "SIGNS," TABLE 4.6.7(A), "SIGN STANDARDS PER ZONING DISTRICT," TO MODIFY SIGN SIZE REGULATIONS FOR SINGLE FAMILY RESIDENTIAL DISTRICTS; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AUTHORITY TO CODIFY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Land Development Regulations ("LDR") of the City of Delray Beach ("City") Code of Ordinances provide authority for the City Commission to amend, change, supplement, or repeal the LDR from time to time; and

WHEREAS, the Florida Legislature amended s. 559.955, F.S. in 2021 with CB/HB 403 to limit the power of municipal governments to regulate home based businesses; and

WHEREAS, LDR Section 4.3.3 restricts home-based businesses more broadly than Florida Statutes allow; and

WHEREAS, pursuant to Florida Statutes 163.3174(4)(c), the Planning and Zoning Board for the City of Delray Beach, sitting as the Local Planning Agency, considered this item at a public hearing on June 20, 2022, and **voted** **to** to recommend these proposed text amendments be approved, finding the request and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in the Land Development Regulations; and

WHEREAS, the City Commission of the City of Delray Beach finds this Ordinance is consistent with the Comprehensive Plan, meets the criteria set forth the Land Development Regulations, and is in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The recitations set forth above are incorporated herein.

Section 2. Article 4.3, "District Regulations, General Provisions," Section 4.3.3, "Special requirements for specific uses" of the Land Development Regulations of the City of Delray Beach, Florida is hereby amended as follows:

Sec. 4.3.3. Special requirements for specific uses.

(A) - (J) (These sections shall remain in full force and effect as adopted.)

(K) **Home-occupations-based business.** A business is considered a home-based business ~~occupation is one~~ if it is conducted in a dwelling unit under the following restrictions within the following parameters:

- (a1) The employees of the business must live on the property; an additional two employees that reside elsewhere may also work at the business. ~~No person other than members of the family residing on the premises shall be engaged in such occupation.~~
- (b2) The use of the dwelling unit for the home-based business ~~occupation~~ shall be clearly incidental and subordinate to its use for the residential use purposes by its occupants, and shall under no circumstances change the residential character thereof.
- (c3) ~~There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation.~~ As viewed from the street, the use of the residential property must be visually consistent with the uses of the residential areas that surround the property. External modifications made to a residential dwelling to accommodate a home-based business must conform to the residential character and architectural aesthetics of the neighborhood.
- (d4) ~~In the single family zoning districts, no~~ One exterior sign up to one square foot in area may be affixed to the principal structure. sign or display shall be visible other than an unlighted

~~nameplate not exceeding one square foot in area, which would indicate from the exterior that the building is being partially used for any purpose other than a dwelling. In the multiple family zoning districts, no sign of any type shall be allowed.~~

- (e5) No ~~home-occupation-based business~~ shall be conducted in any accessory building.
- (f) ~~No home-occupation shall occupy more than 20 percent of the first floor area of the residence, exclusive of the area of any open porch or attached garage or similar space not suited or intended for occupancy as living quarters.~~
- (g6) No traffic shall be generated by such ~~home-based business-occupation~~ in greater volumes than would normally be expected in a residential neighborhood, ~~and any.~~ Any need for parking generated by the conduct operations of such home-occupation business shall be met off the street and other than in the required front setback comply with the zoning district parking regulations. The parking or storage of trailers and heavy equipment is subject to LDR Section 4.6.13.
- (h7) No equipment or process shall be used in ~~such home-occupation~~ a home-based business which creates fumes, glare, noise, odors, vibration, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises.
- (8) All business activities must comply with any relevant local, state, and federal regulations related to the use, storage, or disposal of any corrosive, combustible, or other hazardous or flammable materials or liquids. Local regulations may not be more stringent than those that apply to a residence where no business is conducted.
- (i) ~~The following shall not be considered home occupations: antique or gift shops, musical instruments or dance instructor, barbershops, beauty shops, food processing, fortune-telling or similar activity, massage parlors, medical or dental laboratories, outdoor repair, photographic studio, retail sales, studio for group instruction, swimming instructor, and tearooms. The giving of group instruction of any type shall not be deemed a home occupation.~~
- (j) ~~The giving of individual instruction to one person at a time such as an art or piano teacher, shall be deemed a home occupation, provided however, that the provisions of subsection (i) above shall apply, as to prohibiting individual uses.~~
- (k) ~~Fabrication of articles such as those commonly classified under the terms of arts and handicrafts may be deemed a home occupation, subject to the other terms of this subsection, and providing no retail sales are made at the home.~~

- (19) ~~A home-occupation-based business shall be subject to all applicable city occupational licenses and other business taxes.~~
- (10) Any business that does not meet the definition of a home-based business in Section 559.955, Florida Statutes is not considered a home-based, and is not permitted to operate in a residential zoning district.

~~(KK) **Home tutorial services.**~~

- (1) ~~Shall only be as an accessory use in a private residence.~~
- (2) ~~Is limited to no more than five students at any one time.~~
- (3) ~~Traffic generated by such Home Tutorial Services shall not exceed traffic volumes than would normally be expected in a residential neighborhood. Any need for parking generated by the operation of such Home Tutorial Services shall be met off the street and other than in the required front setback.~~
- (4) ~~Home Tutorial Services shall not occupy more than 20 percent of the first floor area of the residence, excluding the area of any open porch, attached garage, or similar space which is not suited or intended for occupancy as living quarters.~~

Section 3. Article 4.4, “Base Zoning District,” Section 4.4.1, “Agricultural Zone District (A)” of the Land Development Regulations of the City of Delray Beach, Florida, is hereby amended as follows:

(A) - (B) (These subsections shall remain in full force and effect as adopted.)

(C) ***Accessory uses and structures permitted.*** The following uses are allowed when a part of, or accessory to, the principal use:

(1) - (3) (These subsections shall remain in full force and effect as adopted.)

(4) Uses and structures normally associated with residences such as: bird aviaries, boat docks, dog houses and dog runs, garages, greenhouses, guest cottages, playhouses, pool houses and covers, pump houses, slat houses, storage sheds, tennis courts, workshops, swimming pools, and home occupations-based businesses.

(5) (This subsection shall remain in full force and effect as adopted.)

(D) - (G) (These subsections shall remain in full force and effect as adopted.)

Section 4. Article 4.4, “Base Zoning District,” Section 4.4.2, “Rural Residential (RR) Zone District” of the Land Development Regulations of the City of Delray Beach, Florida, is hereby amended as follows:

(A) - (B) (These subsections shall remain in full force and effect as adopted.)

(C) ***Accessory uses and structures permitted.*** The following uses are allowed when a part of, or accessory to, the principal use:

(1) (This subsection shall remain in full force and effect as adopted.)

(2) Uses and structures normally associated with residences such as: bird aviaries, boat docks, dog houses and dog runs, garages, greenhouses, guest cottages, playhouses, pool houses and covers, pump houses, slat houses, storage sheds, tennis courts, workshops, swimming pools, and home ~~occupations-based businesses.~~

(3) (This subsection shall remain in full force and effect as adopted.)

(D) - (G) (These subsections shall remain in full force and effect as adopted.)

Section 5. Article 4.4, “Base Zoning District,” Section 4.4.3, “Single Family Residential (R-1) Districts” of the Land Development Regulations of the City of Delray Beach, Florida, is hereby amended as follows:

(A) - (B) (These subsections shall remain in full force and effect as adopted.)

(C) ***Accessory uses and structures permitted.*** The following uses are allowed when a part of, or accessory to, the principal use:

(1) (This subsection shall remain in full force and effect as adopted.)

(2) ~~Home-occupations-based businesses,~~ subject to ~~the restrictions set forth in~~ Section 4.3.3(K).

(3) Family day care home pursuant to Section 4.3.3(T).

~~(4) Home tutorial services subject to the restrictions set forth in Section 4.3.3(KK).~~

~~(54)~~ Recreational facilities attendant to a subdivision which is operated under a bonafide homeowners association such as: tennis courts, swimming pools, exercise area, clubhouse, and golf courses.

~~(65)~~ The rental or lease of a boat dock when the dock is assigned to, or on the same lot as each residential use on a one-to-one basis.

(D) - (G) (These subsections shall remain in full force and effect as adopted.)

Section 6. Article 4.4, “Base Zoning District,” Section 4.4.5, “Low Density Residential (RL) District” of the Land Development Regulations of the City of Delray Beach, Florida is hereby amended as follows:

(A) - (B) (These subsections shall remain in full force and effect as adopted.)

- (1) Uses and structures normally associated with residences such as: bird aviaries, boat docks, dog houses and dog runs, garages, greenhouses, playhouses, pool houses and covers, pump houses, slat houses, storage sheds, tennis courts, and workshops,~~and home occupations.~~
- (2) Family day care home pursuant to Section 4.3.3(T).
- ~~(3) Home tutorial services subject to the restrictions set forth in Section 4.3.3(KK).~~
- ~~(43) Home-occupations-based businesses, subject to Section 4.3.3(K).~~
- ~~(54) Recreational facilities attendant to a subdivision which are operated under a bonafide homeowners association such as: tennis courts, swimming pools, exercise area, clubhouse, and private golf courses.~~
- ~~(65) The rental or lease of a boat dock when the dock is assigned to, or on the same lot as, each residential use on a one-to-one basis.~~
- ~~(76) Guest cottages, only when accessory to a single family detached structure.~~
- ~~(87) Community Gardens in connection with an approved multi-family development pursuant to regulations set forth in Section 4.3.3(D).~~

(D) - (G) (These subsections shall remain in full force and effect as adopted.)

Section 7. Article 4.4, “Base Zoning District,” Section 4.4.6, “Medium Density Residential (RM) District” of the Land Development Regulations of the City of Delray Beach, Florida is hereby amended as follows:

(A) - (B) (These subsections shall remain in full force and effect as adopted.)

(C) ***Accessory uses and structures permitted.*** The following uses are allowed when a part of, or accessory to, the principal use:

- (1) Uses and structures normally associated with residences such as: bird aviaries, boat docks, dog houses and dog runs, garages, greenhouses, playhouses, pool houses and covers, pump houses, slat houses, storage sheds, tennis courts, workshops, swimming pools, and home-occupations-based businesses.

(2) Family day care home pursuant to Section 4.3.3(T).

~~(3) Home tutorial services subject to the restrictions set forth in Section 4.3.3(KK).~~

(43) Recreational facilities attendant to a subdivision which is operated under a bonafide homeowners association such as: tennis courts, swimming pools, exercise area, clubhouse, and private golf courses.

(54) The rental or lease of a boat dock when the dock is assigned to, or on the same lot as, each residential use on a one-to-one basis.

(65) Guest cottages, only when accessory to a single family detached structure.

(76) Community Gardens in connection with an approved multi-family development pursuant to regulations set forth in Section 4.3.3(D).

(D) - (G) (These subsections shall remain in full force and effect as adopted.)

Section 8. Article 4.4, “Base Zoning District,” Section 4.4.7, “Planned Residential Development (PRD) District” of the Land Development Regulations of the City of Delray Beach, Florida is hereby amended as follows:

(A) - (B) (These subsections shall remain in full force and effect as adopted.)

(C) ***Accessory uses and structures permitted.*** The following uses are allowed when a part of, or accessory to, the principal use:

(1) Uses and structures normally associated with residences such as: bird aviaries, boat docks, dog houses and dog runs, garages, greenhouses, playhouses, pool houses and covers, pump houses, slat houses, storage sheds, tennis courts, workshops, and home-occupations-based businesses.

(2) - (4) (These subsections shall remain in full force and effect as adopted.)

(D) - (G) (These subsections shall remain in full force and effect as adopted.)

Section 9. Article 4.4, “Base Zoning District,” Section 4.4.13, “Central Business (CBD) District,” Table 4.4.13(A), “Allowable Uses and Structures in the CBD Sub-districts” of the Land Development Regulations of the City of Delray Beach, Florida is hereby amended as follows:

Table 4.4.13(A)—Allowable Uses and Structures in the CBD Sub-Districts					
Uses	Central Core	Railroad Corridor	Beach Area	West Atlantic Neigh.⁵	South Pairs Neigh
General retail uses and/or facilities, as in GC district (4.4.9) ¹	P	P	P	P	P
Business, professional, and medical uses, as in GC district (4.4.9)	P	P	P	P	P
Services and facilities, as in GC district (4.4.9) ² , excluding drive-through facilities	P	P	P	P	P
Multiple-family dwellings ³	P	P	P	P	P
Astrologist, clairvoyants, fortune tellers, palmists, phrenologists, psychic reads, spiritualists, numerologists and mental healers as in GC district (4.4.9)	-	-	-	-	P
Community residences	See 4.4.13(C)(4)(a)				
Nursing homes, abused spouse residences, continuing care facilities, and assisted living facilities that do not comport with the definition of "community residence"	P	P	P	P	C
Live/work units (see 4.3.3(KKK))	P	P	P	P	P
Hotels, motels, and residential-type inns ³ (see 4.3.3(M) and 4.3.3 (X))	P	P	P	C	C
Bed and breakfast inns (see 4.3.3 (Y))	P	P	P	C	C
Public Parking Garages, as mapped on a Regulating Plan	P,S	P,S	P,S	P,S	P,S
Fabrication and/or Assembly	-	P	-	-	-
Wholesaling, Storage, and Distribution ⁴	-	P	-	-	-
Contractor and trade services	-	P	-	-	P
Automobile brokerage, including vehicle display within an enclosed structure	-	P	-	-	-
Tattoo Establishments (see 4.3.3(ZB))	P,A	P,A	P,A	P,A	P,A
CBD Oil Establishments (see 4.3.3 (CC))	P,A	P,A	-	-	-
Family day care homes (see 4.3.3(T))	A	A	A	A	A
Home-occupations-based businesses (see 4.3.3(K))	A	A	A	A	A
Mechanical parking lifts (see 4.6.9(D)(11) and 4.6.9(F)(4))	A,S	A	A,S	A,S	A,S
Parking areas, passenger drop-off, loading/unloading, refuse and service areas	A,S	A	A,S	A,S	A,S
Automated Parking Garages	-	S	-	-	-
Refuse and service areas					
Recreational facilities (for a multiple-family development)	A	A	A	A	A
Services and repair (incidental to the associated principal use)	A,S	A	A,S	A,S	A,S
Single-family dwelling (occupied by owner, proprietor, or employee of the principal use)	A	A	A	A	A
Storage of inventory (not shared or leased independent of the principal use)	A,S	A	A,S	A,S	A,S
Automobile repair, service	-	C	-	-	-

Neighborhood Automotive Rental facility (See 4.3.3(C))	-	-	-	-	C
Child care Facilities (see 4.3.3(E)) and adult day care facilities (see 4.3.3(F))	C	C	C	C	C
Commercial recreational facilities, such as bowling alleys, skating rinks, and amusement game facilities	C	C	C	C	C
Drive-through facilities (serving banks, financial institutions, retail uses, etc.) ² See 4.4.13(J)(7)(a)	C	C	C	C	C
Food Preparation and/or Processing including bakeries and catering	-	C	-	-	-
Funeral homes, including accessory uses such as a chapel or crematory	C	C	C	C	C
Gasoline stations (See 4.4.13(J)(7)(b) and/or car washes (See 4.4.13(J)(7)(c))	C	C	-	-	C
Large family child care homes (see 4.3.3(TT))	C	C	C	C	C
Dry-cleaning Processing Plants	-	C	-	-	-
Segway tours and Segway sales (see 4.3.3(ZZZZ))	C	C	C	C	C
Theaters, excluding drive-ins	C	C	C	C	C
Pet Services [See 4.3.3(W)]	C	C	C	C	C
Pet Hotels [see 4.3.3(W)]		C			C
Veterinary Clinics [see 4.3.3(W)]	C	C	C	C	C
24-hour or late-night businesses, within 300 feet of residential zoned property [see 4.3.3(VV)]	C	C	C	C	C
Urban Agriculture [4.3.3 (D)] excluding outdoor Urban Farms	P,A	P,A	-	P,A	P,A
Outdoor Urban Farms [4.4.3(D)]	C	C	C	C	C
Clubs and Lodges as in GC (4.4.9)	-	-	-	-	C
Flea Markets, Bazaars as in GC (4.4.9)	-	-	-	-	C
Sales and service of all terrain vehicles and personal watercraft as in GC (4.4.9)	-	-	-	-	C
Vehicle care (See 4.4.13(C)(4)(f)(5))	-	-	-	-	C
Churches or places of worship (See 4.4.13(C)(4)(c))	-	-	-	C	C
LEGEND: P = Principal Use A = Accessory Use C = Conditional Use - = Prohibited Use S = Secondary Street Use					

Section 10. Article 4.4, “Base Zoning District,” Section 4.4.17, “Residential Office (OR) District” of the Land Development Regulations of the City of Delray Beach, Florida is hereby amended as follows:

(A) - (B) (These subsections shall remain in full force and effect as adopted.)

(C) ***Accessory uses and structures permitted.*** The following uses are allowed when a part of, or accessory to, the principal use:

(1) - (2) (These subsections shall remain in full force and effect as adopted.)

(3) Uses and structures normally associated with residences such as: bird aviaries, boat docks, dog houses and dog runs, garages, greenhouses, guest cottages, playhouses, pool houses and covers,

pump houses, slat houses, storage sheds, tennis courts, workshops, swimming pools, and home ~~occupations-based businesses.~~

(4) (This subsection shall remain in full force and effect as adopted.)

(D) - (G) (These subsections shall remain in full force and effect as adopted.)

Section 11. Article 4.4, “Base Zoning District,” Section 4.4.24, “Old School Square Historic Arts District (OSSHAD) of the Land Development Regulations of the City of Delray Beach, Florida is hereby amended as follows:

(A) - (B) (These subsections shall remain in full force and effect as adopted.)

(C) ***Accessory uses and structures permitted.*** The following uses are allowed when a part of, or accessory to, the principal use:

(1) Uses and structures normally associated with residences such as: bird aviaries, dog houses and dog runs, garages, greenhouses, guest cottages, playhouses, pool houses and covers/enclosures, pump houses, slat houses, storage sheds, workshops, swimming pools, and home ~~occupations-based businesses.~~

(2) - (7) (These subsections shall remain in full force and effect as adopted.)

(D) - (G) (These subsections shall remain in full force and effect as adopted.)

(H) ***Special district regulations.***

(1) The gross floor area of residential units within a structure containing permitted non-residential use(s) shall not exceed 50 percent of the gross floor area of the structure within which they are located.

(2) Residential uses shall comprise no less than ten percent of the uses in the OSSHAD District as expressed by the exclusive use of individual parcels, other than condominium ownerships. The existence of an occupational license, except for one issued for a home ~~occupation-based business,~~ shall establish that such a parcel is non-residential.

(3) - (8) (These subsections shall remain in full force and effect as adopted.)

Section 12. Article 4.6, “Supplemental District Regulations,” Section 4.6.7, “Signs,” Table 4.6.7(A) of the Land Development Regulations of the City of Delray Beach, Florida is hereby amended as follows:

Table 4.6.7(A) Sign standards per zoning district ¹				
Type of Sign	Quantity	Area (max.)	Location ^{#2}	Height
Residential Zoning Districts (R-1 Districts, PRD, RL, RM, RR and AG Districts)				
Wall	One per lot or parcel	20 square feet	Min. of 10 feet from property line	-
Free-standing		20 square feet per face		8 inches
CF, All Historic Districts, OS, OSR, OSSHAD and RO				
Wall	Up to two per lot, parcel or development	30 square feet	on building face	-
Projecting		30 square feet per face	from building or under canopy	-
Free-standing		30 square feet per face	may be in the front yard setback	8 feet
Under canopy		4 square feet per face	Under canopy	-
GC, AC, NC, PC, CBD, MIC, MROC, I, POD, POC and LI				
Wall	one per business	15% of building face (max. of 12 feet height, for computational purposes only, times the width) not to exceed 160 square feet	facing each dedicated street frontage	-
	one per building	9 square feet	on rear of building not facing street	-
	one per business	15% of building face (max. of 12 feet height, for computational purposes only, times the width) not to exceed 160 square feet	facing I-95	-
Directory	one per building	24 square feet	on building face	-
Projecting	one per business	30 square feet 3 feet from face of wall	from building or under canopy	-
Under canopy	one per business	4 square feet	under a canopy which extends store front access	-
Free-standing	one per frontage	One sign equal to half the length of the property's frontage in square feet, not to exceed 160 square feet. Each additional sign is limited to 50 square feet.		14 feet
¹ Sign standards in Table 4.6.7(A) are not applicable to uses or development types where otherwise specified in the LDR. ^{#2} Signs must comply with the location requirements of Section 4.6.7(E)(3).				

Section 13. All ordinances or parts of ordinances in conflict herewith be, and the same are, hereby repealed.

Section 14. Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 15. Specific authority and direction is hereby given to the City Clerk to codify this Ordinance.

Section 16. This ordinance shall become effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the _____ day of _____, 2022.

ATTEST:

Katerri Johnson, City Clerk

Shelly Petrolia, Mayor

First Reading _____

Second Reading _____

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney