



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

## PLANNING AND ZONING BOARD STAFF REPORT

### Home Occupations

| Meeting       | File No.     | Application Type                              |
|---------------|--------------|---|
| June 20, 2022 | 2022-183-LDR | Amendment to the Land Development Regulations |

#### Applicant

City of Delray Beach

#### Request

Provide a recommendation to the City Commission on Ordinance No. 23-22, a City-initiated amendment to the Land Development Regulations (LDR) to bring regulations governing home-based business into compliance with S. 559.955, F.S. that restricts the power of municipal governments to regulate home-based businesses, by amending Section 4.3.3, "Special Requirements for Specific Uses," Subsection (K), "Home Occupations," and repealing Subsection (KK), "Home Tutorial Services;" amending Section 4.4.1, "Agricultural Zone District (A)," Section 4.4.2, "Rural Residential (RR) Zone 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 (OR) District," and Section 4.4.24, "Old School Square Historic Arts District (OSSHAD); and amending Section 4.6.7, "Signs."

#### Background Information

HB 403 was adopted in 2021, amending S. 559.955, F.S. to restrict the power of municipal governments to regulate home-based businesses. More specifically, the bill prohibits local governments from taking certain actions relating to the licensure and regulation of home-based businesses; specifies conditions under which a business is considered a home-based business; authorizes home-based businesses to operate in areas zoned for residential use; specifies that home-based businesses are subject to certain business taxes; and authorizes the prevailing party in a challenge to local regulations to recover reasonable attorney fees and costs incurred instituting or defending a legal action concerning the validity of a local government's home-based business regulations.

Currently, the City allows "home occupations" to operate in all residential and mixed use districts, but requires additional licensing, prohibits outside employees, limits the type of signage allowed, and limits the floor area that may be dedicated to the business. HB 403 generally prohibits municipal governments from prohibiting, restricting, regulating, or licensing home occupations in a manner that is different from other businesses in a local government's jurisdiction, except as otherwise provided for. Municipalities retain the right to:

- require business taxes;
- restrict the number of employees who work in the business, but reside elsewhere to 2 persons on premises;
- regulate truck, trailer, or heavy equipment parking and storage;
- prohibit a home occupation with a greater volume of traffic than a residence where no business is conducted;
- require a property to maintain a residential character;
- prohibit business operations in an accessory structure;
- regulate signage and equipment or processes that create noise, vibration, heat, smoke, dust, glare, fumes, or noxious odors, more than would be expected in a residential neighborhood; and
- regulate the use of hazardous materials.

In order to be considered a home-based business, and thus operate in a residential zoning district, a business must meet the above criteria. Any business that does not meet these criteria is not considered a home occupation, and would not be permitted to operate in a residential zoning district.

The proposed amendment revises the regulations to be compliant with the statutory change described above.

#### Project Planner:

Rebekah Dasari, Senior Planner  
[dasari@mydelraybeach.com](mailto:dasari@mydelraybeach.com)  
561.243.7040, Ext. 7044

#### Attachments:

- Ordinance No. 23-22
- Adopted HB 403
- House of Representatives Staff Analysis

## Description of Proposal

### Section 4.3.3, "Special Requirements for Specific Uses"

In addition to general changes that improve the readability of the home occupation regulations, the following substantive updates are proposed.

#### Subsection (K), "Home-Based Businesses"

- Section renamed from "Home Occupations" to "Home-Based Businesses."
- Eliminates the restriction that employees of the business must be members of the family and reside on premises. Up to 2 employees that reside elsewhere may be employed in a home occupation.
- Specifies that any residential dwelling with a home occupation must retain a residential character.
- Retains the provision allowing one square foot of signage; eliminates the requirement that signage must be unlit; and, allows the signage for all home-based businesses, whereas it is currently limited to home occupations in detached single-family dwelling units.
- Subjects parking and storage of trailers and heavy equipment to LDR Section 4.6.13.
- Adds language related to the storage of hazardous materials.
- Removes the list of prohibited home occupations.
- Adds language specifying that 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 business, and is not permitted to operate in a residential zoning district.

#### Subsection (KK), "Home Tutorial Services"

This subsection is repealed in its entirety. The adopted language limits home tutorial services to a degree that the State statute does not allow. Additionally, there is nothing specific to the operations of home tutorial services that necessitate its identification as a separate category in the Special Requirements for Specific Uses.

### Article 4.4, Base Zoning District

The list of accessory uses was updated in nine zoning districts to replace the term "home occupation" with "home-based business," consistent with the language in Section 559.955, Florida Statutes. The list of accessory uses was also updated to remove home tutorial services in three zoning districts where it is specifically listed. The districts updated are shown in the chart below.

|   | Home Occupation → Home-Based Business | Home Tutorial Services |
|---|---------------------------------------|------------------------|
| Section 4.4.1, Agricultural Zone District (A)                     | X                                     |                        |
| Section 4.4.2, Rural Residential (RR) Zone District               | X                                     |                        |
| Section 4.4.3, Single Family Residential (R-1) Districts          | X                                     | X                      |
| Section 4.4.5, Low Density Residential (RL) District              | X                                     | X                      |
| Section 4.4.6, Medium Density Residential (RM) District           | X                                     | X                      |
| Section 4.4.7, Planned Residential Development (PRD) District     | X                                     |                        |
| Section 4.4.13, Central Business (CBD) District                   | X                                     |                        |
| Section 4.4.17, Residential Office (OR) District                  | X                                     |                        |
| Section 4.4.24, Old School Square Historic Arts District (OSSHAD) | X                                     |                        |

### Section 4.6.7, Signs

Table 4.6.7(A), Sign standards per zoning district

The current language in the table does not identify that there are specific requirements for certain uses within the LDR. The table is amended to provide this clarification. For example, the language in Section 4.3.3(K) limits the size of signage to one square foot, but Table 4.6.7(A) allows up to 20 square feet of signage in residential zoning districts. These provisions are intended to accommodate the signage needs of uses such as assisted living facilities, schools, or parks, not a home-based business associated with a single-family residence.

## Review and Analysis

Pursuant to **LDR Section 1.1.6, Amendments**, *the text of these Land Development Regulations may from time to time be amended, changed, supplemented, or repealed. No such action however, shall be taken until a recommendation is obtained from the Planning and Zoning Board and until a public hearing has been held by the City Commission.*

The recommendation of the Planning and Zoning Board will be provided to the City Commission, where the amendments will be reviewed at two public meetings.

Pursuant to **LDR Section 2.4.5(M)(1), Amendment to the Land Development Regulations**, *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 initiated by the City, in order to bring the adopted LDR into compliance with State of Florida legislative changes.

Pursuant to **Section 2.4.5(M)(5), Findings**, *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 Goals, Objectives, and Policies (GOPs) of the adopted Comprehensive Plan are applicable to and support the proposed amendment:

### Neighborhoods, Districts, and Corridors Element

**Objective NDC 3.5 Update Land Development Regulations** *Regularly review and update the Land Development Regulations to provide timely, equitable and streamlined processes including, but not limited to, building permit processes for residential developments and to accommodate mixed-use developments, address market changes and development trends, and other innovative development practices.*

**Policy NDC 3.5.1** *Review the uses and use descriptions in the Land Development Regulations to provide consistent terminology.*

### Housing Element

**Objective HOU 1.1 Neighborhood Character** Support and respect the diverse and distinct character of Delray Beach's neighborhoods.

### Economic Prosperity Element

In order to preserve the residential character of neighborhoods within the city, the proposed LDR update retains the maximum level of regulation permitted within the constraints of the State regulations and restrictions on local governments.

**GOAL ECP 2 INCLUSIVE ENTREPRENEURSHIP** IMPROVE DELRAY BEACH'S GROWING BUSINESS REPUTATION BY STRENGTHENING OUR SMALL BUSINESS ECOSYSTEM WHILE REDUCING RACIAL, GENDER, ETHNIC, AND DISABILITY RELATED DISPARITIES IN ENTREPRENEURIAL OPPORTUNITIES.

**Objective ECP 2.1 Small Business Growth** *Support efforts to strengthen the small business entrepreneurial ecosystem to provide for more in-area resources and services.*

**Objective ECP 5.4 Neighborhood Business Support** *Support small scale economic development within or adjacent to lower-income neighborhoods.*

**Policy ECP 5.5.9** *Strengthen small business and retail opportunities beyond Atlantic Avenue and the downtown corridor by expanding support for businesses to relocate off of Atlantic Avenue, and marketing retail opportunities available in other commercial districts.*

The proposed LDR amendment provides additional avenues for small businesses to operate, or to grow in place, in diverse locations throughout the city.

#### Review By Others

The **City Commission** is anticipated to review the proposed LDR Amendments at two meetings in July 2022, with the second being a public hearing.

#### Options For Board Action

- A. Recommend **approval** to the City Commission of Ordinance No. 22-22, a City-initiated amendment to the Land Development Regulations (LDR) to bring regulations governing home-based business into compliance with S. 559.955, F.S. that restricts the power of municipal governments to regulate home-based businesses, by amending Section 4.3.3, "Special Requirements for Specific Uses," Subsection (K), "Home Occupations," and repealing Subsection (KK), "Home Tutorial Services;" amending Section 4.4.1, "Agricultural Zone District (A)," Section 4.4.2, "Rural Residential (RR) Zone 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 (OR) District," and Section 4.4.24, "Old School Square Historic Arts District (OSSHAD); and amending Section 4.6.7, "Signs;" by finding that the amendment and approval thereof is not consistent with the Comprehensive Plan and does not meet the criteria set forth in Land Development Regulations.
- B. Recommend **approval** to the City Commission of Ordinance No. 22-22, **as amended**, a City-initiated amendment to the Land Development Regulations (LDR) to bring regulations governing home-based business into compliance with S. 559.955, F.S. that restricts the power of municipal governments to regulate home-based businesses, by amending Section 4.3.3, "Special Requirements for Specific Uses," Subsection (K), "Home Occupations," and repealing Subsection (KK), "Home Tutorial Services;" amending Section 4.4.1, "Agricultural Zone District (A)," Section 4.4.2, "Rural Residential (RR) Zone 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 (OR) District," and Section 4.4.24, "Old School Square Historic Arts District (OSSHAD); and amending Section 4.6.7, "Signs;" by finding that the amendment and approval thereof is not consistent with the Comprehensive Plan and does not meet the criteria set forth in Land Development Regulations.
- C. Recommend **denial** to the City Commission of Ordinance No. 22-22, a City-initiated amendment to the Land Development Regulations (LDR) to bring regulations governing home-based business into compliance with S. 559.955, F.S. that restricts the power of municipal governments to regulate home-based businesses, by amending Section 4.3.3, "Special Requirements for Specific Uses," Subsection (K), "Home Occupations," and repealing Subsection (KK), "Home Tutorial Services;" amending Section 4.4.1, "Agricultural Zone District (A)," Section 4.4.2, "Rural Residential (RR) Zone 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 (OR) District," and Section 4.4.24, "Old School Square Historic Arts District (OSSHAD); and amending Section 4.6.7, "Signs;" by finding that the amendment and approval thereof is not consistent with the Comprehensive Plan and does not meet the criteria set forth in Land Development Regulations.
- D. Continue with direction.

#### Public and Courtesy Notices

X Courtesy Notices were provided to the homeowner associations in the city.

N/A Public Notices are not required for this request.