

## MEMORANDUM

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**DATE:** August 2, 2022

**TO:** Honorable Mayor and City Commissioners

**VIA:** James Slaton, City Manager

**FROM:** Autumn Cochella, Assistant Development Services Director  
Mark J. Bennett, Development Services Director

**Public Hearing Required - Notice Requirements Have Been Met**

**RE:** Ordinance 2022-36 LDR Updates Chapter 23 Land Development Regulations – 2nd Reading and public hearing

**SYNOPSIS:** *Staff proposes amendments to the following sections of the Land Development Regulations (LDRs) (Chapter 23, Lake Wales Code of Ordinances):*

- a. Section 23-303 Streets*
- b. Section 23-348 Home Based Businesses*
- c. Section 23-802 Definitions*

### RECOMMENDATION

Staff recommends adoption at second reading, following a public hearing.

At a regular meeting on June 28, 2022, the Planning Board made a recommendation of approval for the proposed changes to the Land Development Regulations. City Commission approved Ordinance 2022-36 at first reading on July 19, 2022.

### BACKGROUND

Areas of the Land Development Regulations (LDRs) (Chapter 23, Lake Wales Code of Ordinances) have been identified as needing amendments.

#### **Sec. 23-303 Streets**

*The current code access requirement calls for building frontage and primary access directly from a local street. For smaller developments of only a few lots, Staff brought code language before the Development Review Committee (DRC), which mirrors that of the City of Haines City's, allowing a private access road connecting to a local road approvable by City Commission. The DRC had no objections to the code change, finding that emergency access would not be restricted.*

Every building hereafter erected or moved shall be on a lot with a minimum width of 20 feet adjacent to or abutting on a paved public street, or with access to a paved public street by means of a private street approved by the City Commission, which has a minimum of 24 feet wide right-of-way or easement. All structures shall be located on lots so as to provide safe and convenient access for servicing, fire protection and related emergencies and required off-street parking.

### **Section 23-348 Home Based Businesses**

*The City's "Home Occupations" Section 23-348 is critically outdated due to several legislative changes that have taken place at the State-level, which have redefined how local governments can regulate these uses. The City hired Merle Bishop, FAICP, Planning Consultant with Pennoni through our Master Consulting Agreement to have this section revised. Based on legislative changes to Section 559.955, Home-Based Businesses, Government Restrictions, and after reviewing other local ordinances, the Consultant recommends a new Section 23-348 entitled Home-Based Businesses. Staff Supports the recommended changes.*

#### Section 23-348. Home-Based Business

a. The purposes of this section are to:

1. Permit the residents of the City of Lake Wales a choice in the use of a limited area of their home as a place of livelihood and the production or supplementing of personal and family income;
2. Permit no-nuisance commercial businesses within residences while maintaining a residential area or neighborhood without excessive noise, light, or other nuisances that undermine the purpose and character of the residential district;
3. Protect residential properties from any adverse impacts associated with home-based businesses;
4. Ensure that the rights of neighbors and other residents are not compromised by intrusive, hazardous, or environmentally degrading business activities;
5. Protect residential property values;
6. Permit "Cottage Food Operations" consistent with the provisions of the "Home Sweet Home Act" (Chapter 500, F.S.);
7. Ensure consistency with Section 559.955, F.S. (Home-based businesses); and
8. Establish performance criteria and standards for home-based businesses that will provide fair and equitable administration and enforcement of this section.

b. Home-based businesses shall include the following types or categories of activities:

1. Home occupation – a business, personal services, digital services, professional services, on-line teaching or training to individuals or groups, computer services such as repair or assembly, an occupation or trade conducted by the occupant

- of a dwelling as a secondary use. Usually conducted in a home office space, studio or defined workspace.
2. Telecommuting/Telework – a “work at home” arrangement between an employer and employee for performing work at a location other than the primary work location, such as at the home of an employee, and sending and receiving material by phone, email or other electronic means.
  3. Cottage Food Operation – a natural person or entity that produces or packages cottage food products at the residence of the natural person or at the residence of a natural person who has an ownership interest in the entity, and sells such products in accordance with Section 500.08, F.S. (Chapter 500, F.S.)
  4. Home-based cottage industry – a small-scale, light manufacturing business carried on at home by family members using their own equipment. Typically referred to as handmade, handcrafted or artisan items made using hand tools, mechanical tools and electronic tools for the manufacture of finished products or parts that are valued for their uniqueness, handmade qualities, artistic value or traditional characteristics.
- c. A home-based business shall be allowed in any residence provided such home-based business is clearly incidental and secondary to the use of the dwelling as a residence and provided there are no external appearance of a business or commercial activity. Any person operating a home-based business is required to obtain a local business tax receipt pursuant to Chapter 19 of the Lake Wales Code of Ordinances.

1. **Employment:**

- i. The home-based business shall be conducted by a member of the immediate family residing on the premises and up to a maximum of two (2) non-resident employees or independent contractors on-site at any time. [§559.955(3)(a), F.S.]
- ii. A cottage food operation may employ a person who does not reside on the premises provided the residence is occupied by a person who has an ownership interest in the home-based business. [§500.03(j), F.S.]
- iii. The home-based business may have additional remote employees that do not work on premise at the residential dwelling.

2. **Location and area:**

- i. Regardless of the location of the home-based business, the principal dwelling unit on the property shall be the bona fide residence of the home-based business practitioner. The home-based business shall be clearly incidental and secondary to the property’s use for residential purposes.

- ii. The floor area devoted to a home-based business shall not exceed twenty-five (25) percent of the gross floor area of conditioned air space of the dwelling.
  - iii. A home-based business may be conducted from a completely enclosed accessory structure with the approval of a special exception use permit pursuant to the requirements of Section 23-216 of this Code.
3. **Outward Appearance:** As viewed from any travelway, the use of the residential property shall be consistent with the uses of any surrounding residential uses. Outdoor storage, displays or equipment associated with a home-based business other than those that are customarily associated with a residential use are prohibited. 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.
4. **Customers and clients:** Visits to the premises by customers and clients of the home-based business shall occur only by scheduled appointment and no more than two (2) customers or clients may visit the premises at one time.
5. **Signage:** One non-illuminated business identification sign, mounted flush to the dwelling unit and not more than two (2) square feet in area shall be allowed.
6. **Nuisances:** A home-based business shall not create noise, vibration, glare, fumes, odors, dust, heat, or smoke.
7. **Electronic Interference:** No equipment, electrical devices or processes shall be used which may cause electromagnetic disturbances, electrical interference or create visual or audible interference in any radio, television, or satellite receiver or telephone, which violates FCC standards, or which causes fluctuation in off-site voltages.
8. **Hazardous Substances:** No highly toxic, explosive, flammable, combustible, corrosive, radioactive, volatile organic chemical compounds or similar hazardous materials shall be used, stored, or manufactured on the premises in amounts exceeding those which are typically found in normal residential use. No chemicals or chemical equipment shall be used or stored, except those that are used for domestic or normal household purposes.
9. **Vehicle Traffic:** Traffic generated by the proposed use must not negatively impact the safety, ambiance and characteristics of the residential area or neighborhood. Any increase to existing traffic created by the home-based

business shall not exceed ten (10) additional trips per day. Based on the assumption that a single-family residence generated ten (10) vehicle trips per day, and residence with a home-based business will not exceed a total of twenty (20) vehicle trips per day.

10. **Truck traffic:** Delivery and shipping of merchandise, goods, or equipment, to the site of the home-based business shall be made by a vehicle typically employed in residential deliveries and shipping, such as, passenger vehicles, mail carriers, or step vans (i.e. UPS, Federal Express, etc.). No deliveries or shipping to the site of the home-based business by semi-tractor/trailer truck or vehicles having more than two (2) axles shall be permitted. Deliveries of any kind shall not exceed one (1) per day.

11. **Parking:**

- i. Home-based businesses shall provide adequate parking spaces for any and all anticipated increase in vehicles at the dwelling including residents, employees, visitors, clients and customers of the home-based business. Such parking shall be provided in a manner and style that does not diminish the residential quality of the surrounding area and does not create adverse parking impacts on the adjacent street or properties.
- ii. All vehicles shall be parked within the driveway or in a designated parking space(s) that is located on the lot of the home-based business other than a required front yard and not within the road right-of-way unless on-street parking is legally authorized.
- iii. Sufficient lane widths on the adjacent roadway shall be maintained free of parked vehicles for the safe flow of through traffic.
- iv. Vehicles shall not be parked over a sidewalk or on any unimproved surfaces at the residence.

12. **Sales of services or products:**

- i. Retail sales on-site shall be made by appointment only and are limited to services which are provided on-site; goods which are manufactured, assembled, or grown on site; or products which are directly related to the goods or services rendered by the home-based business.
- ii. There shall be no sales of services or products on the premises which are not provided or produced on the premises, except those sales which are incidental to the business.
- iii. The home-based business and the address of the premises shall not be advertised in such a manner that would encourage customers or salespersons to come to the property without an appointment.

- iv. A cottage food operation may sell, offer for sale, and accept payment for cottage food products over the Internet or by mail order. Such products may be delivered in person directly to the customer, or a specific event venue, or by United States Postal Service or commercial mail delivery service. A cottage food operation may not sell, offer for sale, or deliver cottage food products at wholesale. [§500.80(2), F.S.]
- v. All other retail or wholesale sales shall be made via telephone, Internet, or mail order. Products shall be delivered in person directly to the customer, a specific event venue, by United States Postal Service or a commercial delivery service.

13. **Prohibited Business Activities:** The following shall not be permitted as a home-based business:

- i. Music instruction for groups of more than two (2) clients or students at one time;
- ii. Group consultation or giving group instruction of any type for more than two (2) people at one time;
- iii. The use of any machinery, tools, or equipment that in scale, size or numbers beyond what is typically found in a home;
- iv. Beauty shop/salon or barbershop
- v. Private club;
- vi. Antique or gift shop;
- vii. Commercial kennel;
- viii. Nursery school or pre-school;
- ix. Public dining facility or tearoom;
- x. Automotive work of any type, including that of recreational vehicles; and
- xi. Repair of equipment that takes place outdoors.

**Sec. 23-802 Definitions**

*Necessary to update our Definitions section of the code in support of the new Section 23-348 Home-based businesses.*

Home-based business means any occupation, professional activity, business, profession, or commercial activity conducted entirely within a dwelling unit and carried on by a member or members of the immediate family or household occupying the dwelling and up to a maximum of two (2) non-resident employees or independent contractors on-site at any time. A home-based business is clearly incidental and secondary to the use of the property for residential purposes and does not change the appearance or character of the dwelling. Home-based

business includes: home occupation, telecommuting/telework, cottage food operations, and home-base cottage industry.

**CODE REFERENCES AND REVIEW CRITERIA**

*Section 23-303 Streets*

*Section 23-348 Home Based Businesses*

*Section 23-802 Definitions*

**FISCAL IMPACT**

None

**ATTACHMENTS**

Ordinance 2022-36

Sources for Section 23-348 Update

FS 559-955