

MEMORANDUM

TO: Mayor England
 Vice Mayor Samora
 Commissioner George
 Commissioner Rumrell
 Commissioner Torres

FROM: Max Royle, City Manager *MR*

DATE: July 14, 2021

SUBJECT: Conditional Use Permits and Home Occupations: Ordinance 21-10, First Reading, to Amend the Land Development Regulations Concerning Home Occupations and Conditional Use Permits

BACKGROUND

At this time, most conditional use permits must be approved by the City Commission. The Planning Board does review requests for such permits and makes a recommendation to you as to whether they should be approved. The Board does approve permits for home occupations.

At your May 18th joint meeting with the Planning Board and the Sustainability and Environmental Planning Advisory Committee, you discussed and approved the staff's suggestion that the Planning Board approve certain conditional use permits, such as for drive-thru windows, the outside serving of food and beverages, and the outside storage of merchandise.

The Planning Board reviewed this proposal at its June 15th meeting and by unanimous consensus recommended that an ordinance be drafted to revise the Land Development Regulations to give the Board the authority to review and grant or deny all conditional use permit applications except those that request construction of new single-family and multifamily residences in commercial land use districts.

After June 15th, the Building Official became aware of a new state law, House Bill 403, which amends Florida Statute 559.955 to pre-empt the authority of cities to regulate home occupations. Mr. Law decided that the ordinance to allow the Planning Board to approve most conditional use permits should also include the provision in House Bill 403 concerning home occupations, so that the City's Land Development Regulations would be in compliance with Florida Statute 559.955.

ATTACHMENTS

Attached for your review is the following:

- a. Page 1, the recommendation made by the Planning Board at its June 15th meeting that it have the authority to issue certain conditional use permits.
- b. Pages 2-13, Ordinance 21-10

You'll note Table 3.02.02 (pages 3-8) in the Ordinance. It shows which conditional use permits require Commission approval and which can be approved by the Planning Board.

Also, please note: a) Page 9 in the Ordinance that Section 7.02.01 of the City's Land Development Regulations shows the pre-emption by the state of home occupations; b) page 11 amends Section 10.03.03 of the Regulations to give the Planning Board the authority to issues all conditional use permits designated as C-2 in Table 3.02.02.

ACTION REQUESTED

It is that you have Mr. Law explain the background of Ordinance 21-10 and that you then approve it on first reading.

The Ordinance will then be scheduled for its first public hearing and second reading at your September 13th meeting.

MEMO

To: Max Royle, City Manager
From: Bonnie Miller, Executive Assistant
Subject: PZB Authority to Grant Certain Conditional Use Permits
Date: Wednesday, June 16, 2021

Please be advised at its regular monthly meeting held Tuesday, June 15, 2021, the City of St. Augustine Beach Comprehensive Planning and Zoning Board agreed by unanimous oral consensus to recommend the City Commission move forward with the drafting of an ordinance to revise the City's Land Development Regulations (LDRs) to give the Planning and Zoning Board the authority to consider, review, and grant or deny certain conditional use permit applications.

Per Section 10.03.04 of the City's LDRs, the Planning and Zoning Board currently has the sole authority to grant or deny conditional use permit applications for home occupations only. All other conditional use permit applications, including those requesting to build single-family and multi-family residences and condominiums on commercially-zoned lots, outdoor dining, food service and sales outside of enclosed buildings, outdoor displays and sales of merchandise, and drive-thru windows for commercial restaurants and businesses, require applicants to attend and present their applications at two meetings: first, the application is reviewed and considered by the Planning and Zoning Board, which makes a recommendation of approval or denial to the City Commission, and second, the applicant then presents the application to the City Commission for the Commission's review and final say on the approval or denial of the application.

The Board agreed, by unanimous oral consensus, to recommend the City Commission move forward on the drafting of an ordinance to revise the City's LDRs to give the Planning and Zoning Board the sole authority to consider, review and grant or deny all conditional use permit applications except those which request construction of new single-family and multi-family residences and condominiums in commercial land use districts.

ORDINANCE NO. 21-10

AN ORDINANCE OF THE CITY OF SAINT AUGUSTINE BEACH, FLORIDA, MAKING FINDINGS OF FACT; AMENDING LAND DEVELOPMENT REGULATIONS OF ARTICLE 3 DEFINING USES, ARTICLE 6 DEFINING IMPERVIOUS SURFACE COVERAGE, ARTICLE 7 HOME OCCUPATIONS, ARTICLE 10 CONDITIONAL USE PERMITS, 11 COMPREHENSIVE PLANNING AND ZONING, AND ARTICLE 12 PROCEDURES FOR AMENDING THE COMPREHENSIVE ZONING PLAN FOR THE CITY OF SAINT AUGUSTINE BEACH, FLORIDA; AUTHORIZING RECORDING OF A CERTIFIED COPY OF THIS ORDINANCE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WITNESSETH:

WHEREAS, the City Commission finds that it is in the best interests of the citizens of Saint Augustine Beach, Florida to allow the Comprehensive Planning and Zoning Board review some of the Conditional Use permits for the City of Saint Augustine Beach, Florida;

WHEREAS, the City has a Planning and Zoning Board which routinely reviews changes to land development and land use matters within the City;

WHEREAS, the City seeks to streamline the processes and agenda items and delegate authority to the Planning and Zoning Board;

WHEREAS, the State of Florida adopted House Bill 403 which made a change to Fla. Stat. 559.955 that preempts local regulation of some home-based business and the Code needed to be changed to come into compliance with those changes;

WHEREAS, in a previous ordinance amending section 6.01.02, the mixed use district was inadvertently left out of the table;

WHEREAS, the purposes of this article are to establish uniform procedures for the application to the City which comply with Florida Law.

NOW THEREFORE BE IT ORDAINED BY THE PEOPLE OF THE CITY OF SAINT AUGUSTINE BEACH:

SECTION 1. The foregoing recitals are incorporated as legislative findings of fact.

SECTION 2. Amend Chapter 3 of the City's Land Development Code as follows:

Sec. 3.02.02. Uses.

- A. Except as provided in subsection B. herein, the permitted and conditional uses for all land use districts except mixed use districts are listed in Table 3.02.02. Uses for mixed use districts are listed in section 3.02.02.01. The list of uses contained in said table are exclusive, and any use not included under permitted or conditional uses shall be prohibited in such districts.
- B. Pharmacies may be located only in those commercial areas located within the city of St. Augustine Beach along State Road A1A from Pope Road south along the State Highway to the city's southern limits, including the area located within the Anastasia Plaza.
- C. For all uses designated as C-2 in section 3.02.02, the Comprehensive Planning and Zoning Board may stand in the place of the City Commission for the purposes of this section.

**TABLE 3.02.02
TABLE OF USES BY LAND USE DISTRICT**

Legend: P=Permitted; C-1= Conditional Use approved by the City Commission; C-2 = Conditional Use approved by the Comprehensive Planning and Zoning Board; X = Prohibited

Uses	Land Use District							
	L	ML	M	H	CO	I	R	C N
<i>Residential</i>								
Single-family	P	P	P	P	C-1	X	X	X
Mobile home	X	X	X	X	X	X	X	X
Multifamily, condominiums	X	X	P	P	C-1	X	X	X
Adult congregate living facility (group home)	C-1	C-1	C-1	C-1	X	X	X	X
Childcare (in the home)	X	X	X	C-2	C-2	X	X	X
Bed and breakfast	X	X	C-2	C-2	P	X	X	X
Rooming house	X	X	X	C-2	C-2	X	X	X
Temporary residences (construction, model home)	C-2	C-2	C-2	C-2	X	X	X	X

<u>Business Activities as defined under Fla. 559.955</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>All home occupations not defined as business activities under Fla. Stat. 559.955</u>	<u>C-2</u>	<u>C-2</u>	<u>C-2</u>	<u>C-2</u>	<u>C-2</u>	X	X	X
<i>Offices</i>								
Professional offices	X	X	X	X	P	X	X	X
Business offices	X	X	X	X	P	X	X	X
Banks (drive-up facilities allowed)	X	X	X	X	P	X	X	X
Post offices, including mailing, and customer services such as messenger answering services	X	X	X	X	P	X	X	X
Government offices (other than city offices)	X	X	X	X	P	P	X	X
<i>Retail Sales</i>								
Retail outlets for sale of antiques, art, artist supplies, arts and crafts supplies, bait and tackle, bicycles, books, clothing, confectionery, drug and sundries, gifts, hardware, jewelry, luggage, leather goods, office supplies, optical goods, paint, photography supplies, radios, televisions and electronic equipment, satellite equipment, shoes, souvenirs, sporting goods, and tapes and records	X	X	X	X	P	X	X	X
Farmer's market (as defined by section 12-51(f) of the City of St. Augustine Beach Code) Operated by organizations exempt from City Licensure pursuant to section 12-51(f) of such code	X	X	X	X	X	P	X	X
Garage sale (no more than two (2) per year)	P	P	P	P	X	X	X	X
Garage sale by charitable, civic or religious organization (no more than two (2) per year)	X	X	X	X	P	P	P	X

Grocery stores, delicatessens, meat markets (no live poultry or stock), and convenience type stores (beer and wine to be sold and carried off premises only, and as an integral part of grocery item displays and sales)	X	X	X	X	P	X	X	X
Pet shop (but not animal kennel)	X	X	X	X	C-2	X	X	X
Shopping centers	X	X	X	X	P	X	X	X
<i>Services, Hotels, and Restaurants</i>								
Service establishments: barber and beauty shops, bakery (but not wholesale), bicycle rentals, costuming shops, dry cleaner (using nonflammable solvents only), electronic and light mechanical repair stores, florists, interior decorator, laundromat, photography studio, printing, shoe repair, tailor, travel agency, upholstery shop, and video rentals	X	X	X	X	P	X	X	X
Catering	X	X	X	X	C-2	X	X	X
Condominium hotels	X	X	X	X	C-1	X	X	X
Day care center	X	X	X	X	C-2	X	X	X
Equipment rental	X	X	X	X	C-2	X	X	X
Food and/or beverage service or consumption outside of an enclosed building on the premises of a restaurant or hotel/motel	X	X	X	X	C-2	X	X	X
Funeral home	X	X	X	X	C-2	X	X	X
Hotel/motel (including ancillary uses such as restaurants, lounges and night clubs)	X	X	X	X	P	X	X	X
Live theaters, satellite presentations, and motion pictures (not drive-in)	X	X	X	X	P	X	X	X
Mini-storage warehouses	X	X	X	X	C-2	X	X	X
Pest control	X	X	X	X	C-2	X	X	X

Pharmacy	X	X	X	X	P	C	X	X
Restaurant operated wholly within an enclosed building including servicing of alcoholic beverages incidental to the restaurant business only (no drive-up facility)	X	X	X	X	P	X	X	X
Restaurant operated wholly within an enclosed building with drive-up facilities (including serving of alcoholic beverage incidental to the restaurant business only within the restaurant, but not at the drive-up facility)	X	X	X	X	C-2	X	X	X
Services, hotels (but not hotels in a condominium form of ownership), and restaurants	X	X	X	X	P	X	X	X
Veterinarian and animal hospital (without an outside kennel)	X	X	X	X	C-2	X	X	X
<i>Educational, Cultural, Religious Uses</i>								
Elementary, middle and high schools	P	P	P	P	P	P	P	X
Vocational schools	X	X	X	X	C-2	P	X	X
Churches, synagogues, and temples	P	P	P	P	P	P	P	X
Libraries, art museums	X	X	X	X	P	P	P	X
Social, fraternal clubs, lodges	X	X	X	X	P	X	X	X
Auditoriums	X	X	X	X	P	P	X	X
<i>Recreational, Amusement, and Entertainment</i>								
Arcades	X	X	X	X	C-2	X	X	X
Uses where activity is conducted entirely within an enclosed building (bowling alleys, skating rinks, exercise facilities, billiards, pool parlors, dance studios and martial arts studios)	X	X	X	X	P	X	X	X

Privately owned recreational facilities such as golf courses, country clubs, swimming or tennis clubs	C-2	C-2	C-2	C-2	P	X	P	X
Publicly or privately recreational facilities of any kind and special events not involving amplified noise or sound outside of a structure between the hours of 10:00 p.m. and 9:00 a.m. the following day on land owned by St. Johns County or the city (See section 9.02.15)	X	X	X	C-2	P	P	P	X
Golf driving range not accessory to golf course, par 3 golf, miniature golf, water slides, skateboard parks and similar commercial ventures	X	X	X	X	P	X	P	X
<i>Medical Related Facilities</i>								
Physician offices	X	X	X	X	P	X	X	X
Medical clinics	X	X	X	X	P	P	X	X
Hospital	X	X	X	X	C-2	P	X	X
<i>Motor Vehicle Related Sales and Service</i>								
Service stations or public mechanical garages including automobile washing as an ancillary use (vehicle repair not allowed outside of an enclosed building)	X	X	X	X	P	X	X	X
<i>Miscellaneous Facilities</i>								
Public utility lines	P	P	P	P	P	P	P	P
Utility facility	C-2	C-2	C-2	C-2	P	P	C-2	X
Minor structures with state required permits on environmentally sensitive land, such as dune walkovers	P	P	P	P	P	P	P	P
City-owned or city-operated offices and facilities of any kind	P	P	P	P	P	P	P	X

Construction facilities (such as trailers, vehicles, equipment, and materials) in connection with road or drainage work performed by the State of Florida, St. Johns County, or the city, or by contractors employed by said governmental entities	P	P	P	P	P	P	P	P
Parking lots	X	X	X	X	P	X	X	X

(Ord. No. 18-07, § 1(Exh. 1), 5-7-18; Ord. No. 19-01, § 2, 3-4-19; Ord. No. 21- __, § __)

SECTION 3. Amend Chapter 6 of the City's Land Development Code as follows

s Sec. 6.01.02. Impervious surface coverage.

- A. *Generally.* Impervious surface on a development site shall not exceed the ratios provided in the table in paragraph D. of this section.
- B. *Ratio calculation.* The impervious surface ratio is calculated by dividing the total impervious surface area by the gross site area.
- C. *Alternative paving materials.* If porous paving materials are used, then the area covered with porous paving materials shall not be counted as impervious surface for high density residential and commercial only. Low and Medium density residential shall be allowed a 15% increase in impervious surface ratio if the materials used have a 10% or greater permeability.
- D. *Table of impervious surface ratios.*

Land Use District	Maximum Impervious Surface Ratio ¹
Low density residential	0.40*
Medium density residential	0.50
Medium low density residential	0.50
High density residential	0.70
<u>Mixed Use District</u>	<u>0.70</u>
Commercial	0.70

¹ The maximum impervious surface ratio is given for each district, regardless of the type of use proposed and allowable pursuant to Article III.

* In Low Density Residential land use district a 465 square feet allowance shall be provided for the construction and installation of a pool and pool decking only.

(Ord. No. 18-08 , § 1(Exh. 1), 7-2-18; Ord. No. 20-02 , § 6(Exh. 1), 3-2-20; Ord. No. 20-15 , § 3, 1-4-21; Ord. No. 21- , §)

SECTION 4. Amend Chapter 7 of the City's Land Development Code as follows

Sec. 7.02.01. -- Home occupations.

A home occupation shall be allowed in a bona fide dwelling unit, subject to the following requirements:

- A. All home occupation uses allowed under Fla. Stat. 559.955 are allowed within the City. Should any home occupation not be regulated under Fla. Stat. 559.955, this section shall control those home occupations.
- B. No more than two persons other than members of the family residing on the premises shall be engaged in such occupation.
- C. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants and shall under no circumstances change the residential character of the structure.
- D. 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, unless a sign is required by state law. Said sign shall not exceed minimum state requirements.
- ~~E. No home occupation shall occupy more than twenty (20) percent of the first floor area of the residence. No accessory building, freestanding or attached, shall be used for a home occupation.~~
- F. No traffic shall be generated by such occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a front yard required pursuant to this Code.
- G. No equipment, tools or process shall be used in such a home occupation which creates interference to neighboring properties due to noise, vibration, glare, fumes, odors, or electrical interference. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio, telephone, or television receivers off the premises or causes fluctuations in line voltage off the premises.
- H. Fabrication of articles commonly classified under the terms arts and handicrafts may be deemed a home occupation, subject to the other terms and conditions of this definition and providing no retail sales are made at the home.
- I. Outdoor storage of materials shall not be permitted.

- J. A home occupation shall be subject to all applicable city occupational licensing requirements, fees, and other business taxes.

(Ord. No. 91-7, § 2 Ord. No. 21-__, § ____)

SECTION 5. Amend Chapter 10 of the City's Land Development Code as follows:

Sec. 10.03.00. Conditional use permits.

Sec. 10.03.01. Procedures.

- A. *Rules.* The city commission shall make rules for the conduct of hearings for the granting of conditional use permits. These rules shall include at least the right of any party to:
1. Present his case or defense by oral and documentary evidence.
 2. Submit rebuttal evidence and conduct such cross-examination as may be required for a full and true disclosure of the facts.
 3. Submit proposed findings and conclusions and supporting reasons therefor.
 4. Make offers of compromise or proposals of adjustment.
 5. Be accompanied, represented and advised by counsel or represent himself.
 6. Be promptly notified of any action taken by the city commission concerning his request for the granting of a conditional use permit, or any decisions concerning procedures for the granting of such a permit.
- B. *Evidence.* The city commission shall receive into evidence that which is admissible in civil proceedings in the courts of Florida, but in receiving evidence due regard shall be given to the technical and highly complicated subject matter which must be handled, and the exclusionary rules of evidence shall not be used to prevent the receipt of evidence having substantial probative effect. Otherwise, however, effect shall be given to rules of evidence recognized by the laws of Florida.
- C. *Record.* The city commission shall promulgate appropriate rules and regulations providing for the establishment and maintenance of a record of all requests for conditional use permits. A verbatim transcript of the record is not required, but the commission shall establish such record in sufficient degree to disclose the factual basis for its final determination with respect to requests for permits.
- D. *Orders.* A final order on each request for a conditional use permit shall be made within thirty (30) calendar days of the last hearing at which such request was considered. Each final order shall contain findings upon which the commission's order is based and may include such conditions and safeguards as prescribed by the commission as appropriate in the matter, including reasonable time limits within which action pursuant to such order shall be begun or completed or both.
- E. *Limitations.* A conditional use permit shall not be granted if the proposed use will not be compatible with other uses existing in the neighborhood or the proposed use will conflict with the public interest.

F. *Violations.* The violation of any condition or safeguard when made a part of the terms under which a conditional use permit is granted shall be deemed a violation of this Code.

G. For all uses designated as C-2 in section 3.02.02, the Comprehensive Planning and Zoning Board may stand in the place of the City Commission for the purposes of this section.

(Ord. No. 91-7, § 2; Ord. No. 95-1, § 13; Ord. No. 21- , §)

Sec. 10.03.03. Appeal of decisions.

A. Appeal of decisions on conditional use permits made by the city commission shall be made to the circuit court of St. Johns County.

B. Appeal of decisions on conditional use permits ~~for home occupations~~ made by the comprehensive planning and zoning board shall be made to the city commission.

(Ord. No. 91-7, § 2; Ord. No. 93-14, § 8; Ord. No. 21- , §)

Sec. 10.03.04. ~~Home occupations.~~ Conditional Use Permit Hearings by the Comprehensive Planning and Zoning Board.

~~A. — The comprehensive planning and zoning board shall have the authority to grant or deny a conditional use permit for a home occupation. It shall not be necessary for the city commission to approve or confirm the decision of the board in respect to grant or denial of a conditional use permit for a home occupation.~~

~~B. — The procedures and limitations provided under sections 10.03.01 and 10.03.02 shall apply to conditional use permits for home occupations, except that any reference to the "city commission" or "commission" shall be read as the "comprehensive planning and zoning board."~~

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A. The comprehensive planning and zoning board shall have the authority to grant or deny a conditional use permit for all the uses designated as C-2 in the table found in section 3.02.02. It shall not be necessary for the City Commission to approve or confirm the decision of the comprehensive planning and zoning board in respect to grant or deny a conditional use permit for those uses designated as C-2.

B. The procedures and limitations provided under sections 10.03.01 and 10.03.02 shall apply to conditional use permits for the uses designated C-2 in section 3.02.02, except any reference to the "City Commission" or "Commission" shall be read as the "Comprehensive Planning and Zoning Board".

(Ord. No. 93-14, § 7; Ord. No. 21- , §)

SECTION 6. Amend Chapter 11 of the City's Land Development Code as follows:

Sec. 11.02.03. General functions, powers and duties.

- A. The board shall obtain and maintain information on population, property values, the land economy, land use and other information necessary to assess the amount, direction and type of development to be expected in the city.
- B. The building and zoning department, under the direction of the building official shall serve as staff to the board. The board may request information from any city department or official.
- C. Pursuant to and in accordance with the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes, the board is hereby designated as the local planning agency for the city and shall perform the functions and duties as prescribed in the Act.
- D. The board shall monitor and oversee the operation, effectiveness and status of this Code and recommend amendments to the city commission that are consistent with the St. Augustine Beach Comprehensive Plan.
- E. The city commission may ask the board for advice about specific land use issues and policies.
- F. The board shall keep the commission and the general public informed and advised on the land use policies of St. Augustine Beach.
- G. The board shall conduct public hearings to gather information necessary for the drafting, establishment, amendment, and maintenance of the various elements of the St. Augustine Beach Comprehensive Plan and provisions of this Code.
- H. The board may make or obtain special studies on the location, condition and adequacy of specific facilities of St. Augustine Beach, including housing and commercial and facilities, parks, playgrounds, beaches and other recreational facilities, public buildings, private utilities, transportation and parking.
- I. The board shall review any redevelopment plans prepared under Chapter 163, Part III, Florida Statutes.
- J. The board shall perform other lawfully assigned duties.
- K. The board shall review and act upon applications for development review pursuant to this Code.
- L. Pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act, the comprehensive planning and zoning board is hereby designated to be the land development regulation commission and shall perform the duties and functions prescribed in the Act.
- M. The Comprehensive Planning and Zoning Board shall hear all conditional use permits designated as C-2 in Section 3.02.02 and procedurally shall have all the same powers as the City Commission in the specific authority to review and grant conditional use permits for those uses designated C-2.

(Ord. No. 91-7, § 2; Ord. No. 21- , §)

SECTION 7. Amend Chapter 12 of the City's Land Development Code as follows:

Sec. 12.06.02. Appeals from decisions of the comprehensive planning and zoning board.

A developer, an adversely affected party, or any person who appeared orally or in writing before the comprehensive planning and zoning board and asserted a position on the merits in a capacity other than as a disinterested witness, may appeal the decision on a development plan, variance, conditional use permit designated as C-2 in section 3.02.02, or an appeal under section 12.06.01 reached at the conclusion of an administrative hearing to the city commission by filing a notice of appeal with the Department within thirty (30) days of the date of the decision.

(Ord. No. 91-7, § 2; Ord. No. 92-7, § 15; Ord. No. 93-14, § 9; Ord. No. 21- , §)

SECTION 8. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict.

SECTION 9. If any section, subsection, sentence, clause, phrase, word or provision of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then said holding shall not be so construed as to render invalid or unconstitutional the remaining provisions of this ordinance.

SECTION 10. This Ordinance shall take effect ten (10) days after passage, pursuant to Section 166.041(4), Florida Statutes

PASSED, APPROVED AND ADOPTED at the regular meeting of the City Commission of the City of Saint Augustine Beach, Florida this ____ day of _____, 2021.

MAYOR

ATTEST:

CITY CLERK

EXAMINED AND APPROVED by me this ____ day of _____, 2021.