

ORDINANCE NO. 22-002

AN ORDINANCE OF THE POLK COUNTY BOARD OF COUNTY COMMISSIONERS REGARDING LAND DEVELOPMENT CODE AMENDMENT LDCT-2021-15 AMENDING ORDINANCE NO. 00-09, AS AMENDED (ALSO KNOWN AS THE POLK COUNTY LAND DEVELOPMENT CODE), AMENDING CHAPTER 2, SECTION 206.E, HOME OCCUPATIONS, AND SECTION 216, COMMERCIAL VEHICLES, TO MEET COMPLIANCE WITH CHAPTER 599 OF THE FLORIDA STATUTES PREEMPTION OF LOCAL GOVERNMENT REGULATION OF HOME-BASED BUSINESSES; AND AMENDING SECTION 222.F, COTTAGE INDUSTRIES, TO COMPLY WITH CHAPTER 500 OF THE FLORIDA STATUTES REGARDING REGULATION OF COTTAGE FOOD OPERATIONS IN RESIDENTIAL DWELLINGS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section I(g) of the Constitution of the State of Florida and the Local Government Comprehensive Plan and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes (FS), as amended, (the Act) Polk County is authorized and required to adopt a Land Development Regulations consistent with the Polk County Comprehensive Plan; and

WHEREAS, the Board of County Commissioners adopted said Land Development Regulations on March 1, 2000, titled the Polk County Land Development Code; and

WHEREAS, Chapter 9, Section 903 of the Land Development Code requires Land Development Code Amendments to be a Level 4 Review; and

WHEREAS, Chapter 9, Section 907 sets forth the purpose and review process for Level 4 Reviews; and

WHEREAS, pursuant to Section 125.67 of the Florida Statutes, every ordinance shall embrace but one subject and matter properly connected therewith; and

WHEREAS, pursuant to Section 163.3164 of the Florida Statutes, the Polk County Planning Commission conducted a public hearing, with due public notice having been provided, on the proposed Land Development Code Amendment on November 3, 2021; and

WHEREAS, the proposed text amendment to the Polk County Land Development Code to address changes required to Home Based Businesses and Vehicles associated with them prompted by the recent changes to Florida Statutes;

WHEREAS, the Board of County Commissioners, reviewed and considered all comments received during said public hearing, and provided for necessary revisions; and

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Polk County, Florida that:

NOTE: The underlined text indicates proposed additions to the current language. The ~~strikeout~~ indicates text to be removed from the current ordinance.

SECTION 1: FINDINGS The findings set forth in the recitals to this Ordinance are true and correct and hereby adopted. In addition, the Board hereby adopts and incorporates herein the staff report and makes the following findings based upon the staff report, testimony, and exhibits presented during the hearing:

- a) The Planning Commission, acting in its capacity as the Local Planning Agency for the County, held a public hearing on November 3, 2021, to consider the LDC text amendment contained within the Application and found it to be consistent with the Comprehensive Plan and recommended that the Board adopt the LDC text amendment contained within the Application.
- b) Pursuant to Section 907D.10 of the LDC, the Board shall, in the review of the Application, consider the following factors:
 - a. Whether the proposed text amendment is consistent with all relevant requirements of the Code;
 - b. Whether the proposed text amendment is consistent with all applicable policies of the Comprehensive Plan; and
 - c. Any other matter which the BoCC may deem appropriate and relevant to the text amendment proposal.
- c) The Application is consistent with all relevant requirements of the Comprehensive Plan.
- d) The Application is consistent with all relevant requirements of the LDC, including without limitation, Section 907.

SECTION 2: Chapter 2, Section 206.E, Accessory Uses, of the Polk County Land Development Code, Polk County Ordinance No. 00-09, as amended, is hereby amended in the following manner:

Section 206 Accessory Uses

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E. *Home Occupations (Revised 01/03/05 - Ord. 04-80)*

Home occupations may be permitted as an accessory use to an existing dwelling unit in all residential districts subject to Section 559.955, Florida Statutes, as may be amended, the applicable district regulations, and the requirements listed to follow.

1. **Procedure:**
 - a. ~~Home occupations located other than within the principal dwelling unit (e.g. within an accessory structure or garage) shall be allowed as an accessory use pursuant to a Level 3 Review.~~

- b. ~~Home occupations conforming to this Section and located within the principal dwelling unit shall be allowed without further County approval.~~
- e. ~~A maximum of one person~~ two employees or independent contractors who ~~is do not a member of the immediate family residing permanently reside on~~ the premises may ~~be employed~~ work onsite in the operation of a home occupation.
2. ~~Regardless of the location of the home occupation,~~ the principal dwelling unit on the property shall be the bona fide residence of the home occupation practitioner. The home occupation shall be clearly incidental and secondary to the property's use for residential purposes.
3. ~~No home occupation may occupy more than 25 percent of the gross habitable ground floor area of the principal dwelling unit,~~
4. Traffic generated by the proposed use must not negatively impact the safety, ambiance, and characteristics of the residential neighborhood. ~~The increase to existing traffic created by the home occupation shall not exceed ten additional trips per day. The assumption is that each residential site generates ten trips per day. Therefore, a home occupation may not exceed 20 trips per day. There shall be a minimum of two improved (concrete or pavement) off-street parking spaces available for residents of the dwelling exclusive of an attached or detached garage (as required in Section 709). Additional parking for employees, patrons, or vehicles associated with the Home Occupation shall be located on the property, improved (concrete or pavement), and a minimum of five feet from rights-of-way or neighboring property lines.~~
5. No display of merchandise or outside storage of equipment or materials shall be permitted.
6. No alterations shall be made to the external appearance of any principal or accessory structures or of the property which changes the character of the site from residential to non-residential.
7. No equipment or process used in the home occupation shall create noise, vibration, glare, fumes, electromagnetic interference, odors, or air pollution outside the building other than the type and quantity customarily associated with a home or hobby.
8. ~~One non-illuminated business identification sign mounted flush to the dwelling unit and not more than two square feet in area shall be allowed. Signage shall be in accordance with Section 760.G.~~
9. No storage of hazardous materials, other than substances of a type and quantity customarily associated with a home or hobby, shall be permitted.
10. All home occupation practitioners shall obtain an occupational license.

~~11. The following uses are examples of home occupations:~~

- ~~a. Activities conducted principally by telephone, computer, facsimile, or mail.~~
- ~~b. Studios where handiercrafts or objects of art are produced.~~
- ~~c. Teaching and tutoring instruction of no more than four pupils at a time.~~
- ~~d. Dressmaking or apparel alterations.~~
- ~~e. Barber and beauty shop (one chair).~~

~~12. The following are prohibited as home occupations:~~

- ~~a. Adult entertainment.~~
- ~~b. Automotive service and repair.~~
- ~~c. Bed and breakfast.~~
- ~~d. Eating and drinking establishments.~~
- ~~e. Kennels.~~
- ~~f. Manufacturing.~~
- ~~g. Tanning Salons, tattoo parlors, massage parlors.~~
- ~~h. Commercial sales or leasing of vehicles.~~
- ~~i. Any use that requires a Building Code upgrade (i.e., from residential standards to commercial standards) to accommodate the home occupation.~~

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SECTION 3: Chapter 2, Section 216, Commercial Vehicle Parking, of the Polk County Land Development Code, Polk County Ordinance No. 00-09, as amended, is hereby amended in the following manner:

Section 216 Commercial Vehicle Parking and Storage

A. *Residential Parking*

Parking, storing, or keeping a commercial vehicle regulated by this Section on any lot or parcel within a residential district is prohibited, except in accordance with the requirements of this Section.

B. *Commercial Vehicles Defined*

For purposes of this Section, commercial vehicles shall include the following:

1. Heavy Machinery Equipment;
2. Dump Trucks;
3. Tractors and trailer rigs, either as one unit, or separately;
4. Vehicles having more than two axles on the road; and
5. Similar vehicles not ordinarily used for personal transportation when the parking is not accessory to a permitted use.

C. ***Exemptions (Revised 4/4/02 - Ord. 02-18)***

The following shall be exempted from the requirements of this Section:

1. Commercial vehicles that meet all of the following:
 - a. Less than two tons load capacity;
 - b. Less than nine feet in height, including the load, bed, or box; and
 - c. Less than 26 feet in length.
2. The parking of one commercial vehicle on a five-acre or larger parcel in the A/RR district, provided that the vehicle is parked a minimum of 20 feet from all property boundaries.
3. The temporary parking of construction equipment and vehicles on private land in residential districts where construction is underway, and for which a current and valid building permit has been issued by the County and is displayed on the premises.
4. Any vehicle owned by a public or private utility provider when used in the event of emergencies requiring immediate attention.
5. The parking of agricultural equipment and vehicles on private land used for bona fide agricultural purposes.
6. The storage of lawn maintenance equipment within an enclosed structure.
7. Any vehicle or heavy equipment parked or stored within an enclosed structure such that it is not visible from rights-of-way or neighboring property.

D. ***Special Exceptions*** (Revised 2/5/19 Ord. 19-008; 5/20/09 – Ord. 09-023; 9/25/02 - Ord. 02-59; 04/04/02 - Ord. 02-17)

The parking of commercial vehicles in residential districts may be approved as a special exception by the Land Use Hearing Officer provided they conform to the following standards:

1. Only one commercial vehicle, as regulated by this Section, shall be permitted on any residential lot or parcel.
2. Commercial vehicles shall be currently registered or licensed.
3. The parking of said vehicle does not have a negative impact to the health, safety of welfare of adjacent properties.
4. The applicant can demonstrate that denial of said request would place an unnecessary hardship on the property prohibiting the use of land in a manner otherwise allowed under this Code.
5. Commercial vehicles must be parked on the same lot occupied by the owner or operator of the vehicle.
6. The vehicle shall not be parked in the front yard of the principal residence.
7. The parking area shall be at least 20 feet from all property boundaries.
8. The vehicle shall park in a manner so that the minimum amount of vehicle surface is facing the road adjacent to the property, unless the vehicle is screened or buffered as provided.
9. When the vehicle parking area will be less than 200 feet from a residentially designated or used property, it shall be buffered from the adjacent residential property with a Type B Bufferyard as outlined in Section 720. A fence with a minimum height of six feet may be used in lieu of, or in conjunction with, a vegetative bufferyard.
10. Refrigerator units on vehicles shall not be operated on the site.
11. Approvals shall be valid for one year, or for a shorter period as specified by the Land Use Hearing Officer. Approvals may be renewed, with proper application following notice provided by the Land Development Director 30 days prior to the expiration date, if the commercial vehicle location is consistent with the Land Development Code. The applicant shall bear the burden in demonstrating that the vehicle parking still meets the criteria of the approved Special Exception and this Section.

SECTION 4: Chapter 2, Section 222.F, Cottage Industries, of the Polk County Land Development Code, Polk County Ordinance No. 00-09, as amended, is hereby amended in the

following manner:

F. *Cottage Industries (Added 05/19/2015 – Ord. 15-29)*

Cottage industries in accordance with the definition in Chapter 10 are permitted as accessory uses to a bona fide agricultural property in the A/RR, RS, and RL-1 districts, outside of the Green Swamp Area of Critical State Concern, and under the following conditions:

1. Structures used for light manufacturing, agricultural processing and storage of the goods produced are:
 - a. no greater than an FAR of 0.025 cumulatively of the contiguous agricultural property or properties;
 - b. no single structure is greater than 15,000 square feet under roof; and,
 - c. the total square footage all structures used in production is less than 40,000 square feet cumulatively;
2. All production is conducted within enclosed structures;
3. Structures used for manufacturing, processing and storage of the goods produced are at least 200 feet from offsite residential structures;
4. All storage of finished goods is kept within enclosed structures or containers;
5. There is no slaughtering of animals permitted onsite;
6. Onsite retail sales may be approved by the Planning Commission through a Level 3 Review with consideration given to the extent of the retail activity, infrastructure available to support it, and compatibility with surrounding uses;
7. Events and activities to promote the products produced onsite may be approved in accordance with Section 229, Agritourism; and,
8. Production and sale of alcohol beverages shall be in accordance with the provisions in Section 224 in addition to the Florida Statutes and Florida Administrative Code.
9. Mail order sales and wholesale distribution of products produced onsite is permitted.

~~This level of land use approval~~ Cottage Industries allows for greater production than the Cottage Food Operations pursuant to the Florida Statutes (Section 500.80 at the time this amendment was adopted). Therefore, state, and local food and beverage laws will apply. ~~However, Cottage Food Operations as defined in section 500.03, Florida Statutes, as may be amended, Florida Statute Chapter 500.80 Cottage Food Operations are permitted in all districts on bona fide agricultural property are permitted as an accessory use to an existing dwelling unit regardless of district regulations.~~

SECTION 5: SEVERABILITY

If any provision of this Ordinance is held to be illegal, invalid, or unconstitutional by a court of competent jurisdiction the other provisions shall remain in full force and effect.

SECTION 6: EFFECTIVE DATE

This ordinance shall become effective upon filing with the Department of State.

ENACTED BY THE BOARD OF COUNTY COMMISSIONERS OF POLK COUNTY,

FLORIDA this 4th day of January, 2022.



STATE OF FLORIDA)
)
COUNTY OF POLK)

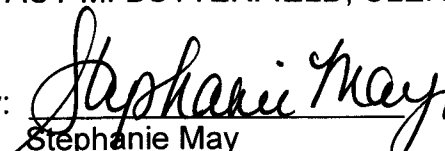
I Stacy M. Butterfield, County Clerk and Comptroller for Polk County, Florida, hereby certify that the foregoing is a true and correct copy of Ordinance No. 2022-002 adopted by the Board on January 4, 2022.

WITNESS my hand and official seal on this 4th day of January 2022.



STACY M. BUTTERFIELD, CLERK

By:


Stephanie May
Deputy Clerk



FLORIDA DEPARTMENT of STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

January 4, 2022

Ms. Stephanie May, Support Specialist, VAB Clerk
Polk County
Post Office Box 988
Bartow, Florida 33831-0988

Dear Ms. May:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Polk County Ordinance No. 22-002, which was filed in this office on January 4, 2022.

Sincerely,

Anya Owens
Program Administrator

AO/lb

