

City of Cocoa

*65 Stone Street
Cocoa, FL 32922*



Meeting Agenda

Wednesday, November 3, 2021

6:00 PM

Cocoa City Council Chambers

Planning and Zoning / Local Planning Agency

I. CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

II. APPROVAL OF AGENDA AND MINUTES:

AGENDA:

21-718 Approval of the November 3, 2021 Planning and Zoning Agenda

Attachments: [PZ Short Agenda Nov 3 2021.docx](#)

MINUTES:

21-719 Approval of the October 6, 2021 Planning and Zoning Minutes

Attachments: [10-06-2021 Draft minutes.pdf](#)

III: NEW BUSINESS:

21-720 CONSIDERATION OF AN ORDINANCE 11-2021 of the City Council of the City of Cocoa, Brevard County, Florida; amending Appendix A, Zoning, Article VIII, Section 17, Home Occupations.

Attachments: [Ordinance 11-2021 Home Based Businesses.pdf](#)
[Home based business ad.pdf](#)

21-721 Consideration of a Comprehensive plan TEXT AMENDMENT (Ordinance 15-2021) consistent with Florida Statute, Section 163.3177, adopting a Private Property Rights Element as a new section into the City of Cocoa's Comprehensive Plan.

Attachments: [Legal Ad private property rights.docx](#)
[Ordinance 15-2021 Cocoa Comp Plan Property Rights Element.docx](#)

IV. NEXT MEETING DATE:

The next regularly scheduled meeting of the Cocoa Planning and Zoning Board will be on Wednesday, December 1, 2021 at 6:00 PM at the Cocoa City Hall, 65 Stone Street, Cocoa, Florida.

V. ADJOURNMENT

NOTICE TO THE PUBLIC:

This is a public meeting. All interested parties may attend in person. The facility wherein this public meeting will be held is accessible to the physically handicapped. In accordance with the Americans With Disabilities Act, persons needing assistance to participate in any of these proceedings should contact the City Clerk of the City of Cocoa, listed below, at least 48 hours prior to the meeting: Carie Shealy, City Clerk, 65 Stone Street, Cocoa, by telephone at (321) 433-8484 or via email at cshealy@cocoafl.org.

Additionally, interested persons may view or listen to the meeting electronically at the following internet sites:

(1) <https://tinyurl.com/s5e875r> or

(2) <https://cocoa.legistar.com/DepartmentDetail.aspx?ID=26365&GUID=FF9D3369-D354-4FAB-800A-57D0AEE30153&Mode=MainBody>

However, the City is not responsible for technical difficulties that may occur while attempting to view or listen to the meeting on the internet.

Interested persons may submit their written comments or questions regarding the meeting prior to the meeting through Email at meetings@cocoafl.org, or via E-comments through the online agenda. Any electronic comments submitted will be made part of the meeting record. Written comments or questions not relevant to the Council meeting agenda will not be made part of the meeting record but will be maintained as public record.

Pursuant to Section 286.0105, Florida Statutes, the City hereby advises the public that: if a person decides to appeal any decision made by the City Council with respect to any matter considered at its meeting or hearing, that person will need a record of the proceedings and for such purpose, affected persons may need to assure that a verbatim record of the proceedings is made, and such record shall include the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission into evidence of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals otherwise not allowed by law.

Although members of the public are entitled to be heard by the City Council on certain items on the meeting agenda pursuant to the City Council Rules of Procedure, members of the public are not entitled to an immediate response by either administrative staff members or Council; however, the City Council or administrative staff may provide a response at their discretion. When presenting before the City Council, all comments or questions should be directed to the Mayor or the chair of the meeting. Comments or questions should not be made directly to administrative staff without permission from the Mayor or chair.

Public debate by individual speakers from the audience on public hearing items shall be limited to three (3) minutes. Applicants or representatives of recognized groups with special interests in a matter shall be limited to ten (10) minutes; and total debate on a single issue shall be limited to thirty (30) minutes. Only one presentation per person per item shall be allowed.

A Council member may add an item to the agenda during the meeting only at the time the agenda is approved. If the item requires action by the Council, then it may be added to the agenda by an affirmative vote of the Council, and written documentation must be submitted at the time the item is added to the agenda. Matters may also be raised by the Council, City Manager or City Attorney under reports and acted upon by the City Council.

This agenda is posted on the Municipal Bulletin Board and at the Central Brevard Library and Reference Center in Cocoa for public review.



CITY OF COCOA
Planning & Zoning Board /
Local Planning Agency
City Council Chambers

Cocoa City Hall
65 Stone Street
Cocoa, FL 32922

AGENDA
Regular Meeting
November 3, 2021
6:00 p.m.

- I. **OPENING MATTERS:**
 - 1. CALL TO ORDER
 - 2. ROLL CALL
 - 3. PLEDGE OF ALLEGIANCE
- II. **APPROVAL OF AGENDA AND MINUTES:**
 - 1. AGENDA: Meeting of November 3, 2021
 - 2. MINUTES: Meeting of October 6, 2021
- III. **OLD BUSINESS:** None
- IV. **NEW BUSINESS:**
 - A. Home Based Businesses

ORDINANCE 11-2021

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COCOA, BREVARD COUNTY, FLORIDA; AMENDING APPENDIX A-ZONING, ARTICLE XIII SUPPLEMENTARY DISTRICT REGULATIONS, SECTION 17 OF THE CITY CODE RELATED TO HOME BASED BUSINESSES (HOME OCCUPATIONS) TO COMPLY WITH RECENT LEGISLATION ADOPTED BY THE FLORIDA LEGISLATURE; MAKING OTHER CONFORMING AMENDMENTS TO THE SCHEDULE OF ZONING DISTRICT REGULATIONS AND CITY CODE TO COMPLY WITH SAID LEGISLATION; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, INCORPORATION INTO THE CODE, SEVERABILITY, AND AN EFFECTIVE DATE.

- B. Private Property Rights

ORDINANCE 15-2021

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COCOA, BREVARD COUNTY, FLORIDA, AMENDING THE TEXT OF THE CITY'S COMPREHENSIVE PLAN TO INCLUDE A PROPERTY RIGHTS ELEMENT AS REQUIRED BY LAW; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, INCORPORATION INTO THE COMPREHENSIVE PLAN, SEVERABILITY AND AN EFFECTIVE DATE AND LEGAL STATUS OF THE PLAN AMENDMENT.

- V. **OTHER BUSINESS:**
 - 1. Open Discussion by Board members

VII. NEXT MEETING DATE:
Wednesday, December 1, 2021

VIII. ADJOURNMENT

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**MINUTES
CITY OF COCOA
PLANNING & ZONING BOARD/ LOCAL PLANNING AGENCY
REGULAR MEETING
October 6, 2021**

A Regular meeting of the Planning & Zoning Board Local Planning Agency was held on October 6, 2021 at City Hall, 65 Stone Street, Cocoa, FL, as publicly noted.

I. CALL TO ORDER:

Chairperson Dobrin called the meeting to order at 6:00 PM.

ROLL CALL:

Michael Dobrin	Chairperson
Al Washington	Vice Chairperson
Todd Anderson	Board Member
Jeri Blanco	Board Member
Marilyn Green	Board Member
Susan Mock	Board Member
Russell Sengel	Board Member
Justin Simpson	Board Member
Aleck Greenwood	Alternate Member
Jesse Heredia	Alternate Member
Debbie Joyce	School Board Representative

PRESENT:

Michael Dobrin	Chairperson
Al Washington	Vice Chairperson
Todd Anderson	Board Member
Marilyn Green	Board Member
Susan Mock	Board Member
Russell Sengel	Board Member
Justin Simpson	Board Member
Aleck Greenwood	Alternate Member
Debbie Joyce	School Board Representative

ABSENT:

Jeri Blanco	Board Member
Jesse Heredia	Alternate Member

STAFF PRESENT:

Kristin Eick, Board Attorney; Alix Bernard, Interim Planning and Zoning Manager and Monica Arsenault, Recording Secretary.

Chairperson Dobrin led the assembly in the Pledge of Allegiance.

II. APPROVAL OF AGENDA AND MINUTES:

1. AGENDA: Meeting of October 6, 2021

* **MOTION BY BOARD MEMBER GREEN; SECONDED BY BOARD MEMBER SENDEL TO APPROVE THE OCTOBER 6, 2021 AGENDA AS WRITTEN.**

AYES: DOBRIN, WASHINGTON, ANDERSON, GREEN, MOCK, SENDEL, SIMPSON, GREENWOOD

MOTION PASSED UNANIMOUSLY (8-0)

2. MINUTES: Meeting of June 2, 2021

* **MOTION BY BOARD MEMBER GREEN; SECONDED BY BOARD MEMBER MOCK TO APPROVE THE JUNE 2, 2021 MINUTES AS WRITTEN.**

AYES: DOBRIN, WASHINGTON, ANDERSON, GREEN, MOCK, SENDEL, SIMPSON, GREENWOOD

MOTION PASSED UNANIMOUSLY (8-0)

III. OLD BUSINESS:

None.

IV. NEW BUSINESS:

A. PZ-21-002000001 – Backyard Chicken Pilot Program

Ms. Bernard gave a presentation¹ and explained that in 2017 the City implemented a pilot program for backyard chickens. This program was in place for two years when it sunset in 2019. From 2017 to 2019 there were two families who participated in the program. In addition to the two families who participated, Code Enforcement has received four complaints about residents who illegally have chickens and roosters.

¹ Exhibit A: Backyard Chicken Program Presentation

There are currently 4,073 parcels of land that have a zoning of RU1-7, RU1-7a or RU1-10.

Alternate member Greenwood asked for more information regarding what the complaints were. In response, Ms. Bernard explained that she had only contacted Code Enforcement to see if there were any complaints and was told there were four, but it was not discussed further than that.

Vice Chairperson Washington raised a concern regarding the \$50 fee that a resident would have to pay the city to have the chickens. He shared that he does not agree with the fee as you wouldn't pay the city if you had a cat or a dog. In response, Board Attorney Eick explained that an inspection is conducted for the coop so the fee is due in part to cover that expense.

Board member Simpson pointed out that a building permit would already be required for the coop so the expense of the inspection should be tied into the permit. Further discussion was held on eliminating the \$50 fee since a building permit would be required for the structure of the coop.

Ms. Joyce asked if this was an annual permit or just a one-time permit. In response, Ms. Bernard clarified that she believed this would be an annual permit.

Alternate member Greenwood asked if the \$50 fee would be an annual charge as well. In response, Ms. Bernard responded affirmatively and explained that the idea is that in collecting the fee yearly the City can keep track of what permits are active and what is inactive.

Ms. Bernard mentioned that another option would be to charge an initial registration fee and then every year after that would require a recertification, however a permit for the coop would still be required.

Discussion was held on what structures require a building permit, for example, a coop that is already assembled and can be bought from Harbor Freight. In response, Board Attorney Eick clarified that only applicable permits would be required and it is not the Board's duty to decide what is and what is not required to have a permit.

Ms. Bernard shared the highlights of Ordinance No. 14-2021 as follows:

- Persons desiring to participate in the Backyard Chicken Pilot Program must apply for and obtain a permit (\$50.00 fee) prior to the keeping of chickens.
- Persons applying for a permit must provide evidence of successful completion of a University of Florida Agricultural Extension Service class, or equivalent, on the care and raising of chickens.

- Up to 4 chickens may be kept on an occupied single-family property within the proper zoning district as noted above.
- Chickens must be kept within a coop and enclosure, and may not be released or set free to roam unless under the direct supervision of the owner and such roaming must be confined to the backyard of the subject property.
- Chickens must be kept for personal use only. Selling of chickens, eggs, feathers, chicken manure, or the breeding of chickens for commercial purposes is strictly prohibited.
- The coop and enclosure must be screened from neighboring property.
- Chicken coops and fence enclosures must be located in the rear/back yard (behind the home). No coop or enclosure will be allowed in any front or side yard. The coop and enclosure must be at least 10 feet from the single-family structure, a minimum of 10 feet from the rear or side property, a minimum of 20 feet from any side street, and a minimum of 20 feet from any neighboring residential homes.

Ms. Bernard stated that staff is recommending that the Planning and Zoning Board recommend approval to City Council of Ordinance No. 14-2021 amending Chapter 5, Animals and Fowl to allow for backyard chickens.

It was noted for the record that no one was in the audience to speak in regards to the item.

* **MOTION BY BOARD MEMBER GREEN; SECONDED BY ALTERNATE MEMBER GREENWOOD TO AMEND THE ORDINANCE TO MAKE THE \$50 FEE AN INTIAL FEE AND THEN REQUIRE A RECERTIFICATION EVERY YEAR AFTER.**

AYES: DOBRIN, WASHINGTON, ANDERSON, GREEN, SENDEL, SIMPSON, GREENWOOD

NAYES: MOCK

MOTION PASSED (7-1)

* **MOTION BY BOARD MEMBER ANDERSON; SECONDED BY VICE CHAIRPERSON WASHINGTON TO RECOMMEND APPROVAL TO CITY COUNCIL OF ORDINANCE NO. 14-2021 AMENDING CHAPTER 5, ANIMALS AND FOWL TO ALLOW FOR BACKYARD CHICKENS TO INCLUDE THE BOARD'S AMENDMENT TO THE ORDINANCE.**

**AYES: DOBRIN, WASHINGTON, ANDERSON, GREEN, SENDEL,
SIMPSON, GREENWOOD**

NAYES: MOCK

MOTION PASSED (7-1)

Ms. Bernard shared a few brief updates on projects going on in the city and noted that if anyone had any questions or concerns, they were welcome to contact her.

In regards to any Tree Board updates, Ms. Bernard shared that the City is in the process of reapplying for its Tree City USA application which is due by November 12, 2021.

VII. NEXT MEETING DATE:

The next scheduled meeting for the Planning and Zoning Board will be held on Wednesday, November 3rd at 6pm in Cocoa City Hall, 65 Stone St, Cocoa, FL 32922.

VIII. ADJOURNMENT:

- * **MOTION BY BOARD MEMBER ANDERSON; SECONDED BY BOARD MEMBER SENDEL TO ADJOURN THE REGULAR MEETING OF OCTOBER 6, 2021.**

**AYES: DOBRIN, WASHINGTON, ANDERSON, GREEN, MOCK,
SENDEL, SIMPSON, GREENWOOD**

MOTION PASSED UNANIMOUSLY (8-0)

MEETING WAS ADJOURNED AT 6:46 PM.

Michael Dobrin, Chairperson

Respectfully Submitted By:

Monica Arsenault, Recording Secretary



Legislation Text

File #: 21-720, Version: 1

PLANNING & ZONING BOARD/LOCAL PLANNING AGENCY AGENDA ITEM

Memo Date: October 27, 2021
Agenda Date: November 3, 2021
Prepared By: Alix Bernard, Senior Planner
Through: Charlene Neuterman, Interim Community Services Director
Requested Action:

CONSIDERATION OF AN ORDINANCE 11-2021 of the City Council of the City of Cocoa, Brevard County, Florida; amending Appendix A, Zoning, Article VIII, Section 17, Home Occupations.

BACKGROUND:

Section 559.955, Florida Statutes, (HB 403), which became effective on July 1, 2021, preempts areas of regulation for home-based businesses to the state. It forbids counties and municipalities from enacting or enforcing any ordinance, regulation, or policy or from taking any action to license or otherwise regulate a home-based business in violation of the statute. Currently, local governments regulate business activities conducted on residential property through ordinances that address "home occupations." The City's existing home occupation ordinance, Appendix A, Zoning, Article XIII Supplementary District Regulations, Section 17, must be substantially amended and stricken to conform to the statutory requirements. Current requirements for home occupations that must be eliminated from the City Code include, but are not limited to:

- The prohibition of home occupations in the RE zoning district
- The designation of home occupations as a special exception in RU-2-10 zoning district
- The limitation of home occupations to home office, preparation and fabrication of arts and handicrafts to be sold off-premises, and use by a physician, surgeon, dentist, lawyer, clergyman and other professional persons for consultation or emergency treatment
- The prohibition of retail sales on the premises
- No home occupation may be conducted in a free standing or attached accessory building or structure

- The home occupation cannot occupy more than 20% of the floor area of the residence .

City staff notes that special notice of this ordinance was provided to Southern Legal Counsel, as required by the Substitute Consent Decree, dated January 28, 2009, in *Houston, et. al. v. City of Cocoa*, Case 6:89-cv-00082-PCF.

The statute provides that a home-based business may operate in an area zoned for residential use and may not be prohibited, restricted, regulated, or licensed in a manner different from other businesses in a local government's jurisdiction except as otherwise provided by the statute.

The statute includes criteria that home-based businesses must meet to operate in an area zoned for residential use. To be considered a home-based business under the bill, a business must meet the following criteria:

- The activities of the home-based business must be secondary to the property's use as a residential dwelling.
- The business employees who work at the residential dwelling must also reside in the residential dwelling, except that up to two employees or independent contractors who do not reside at the residential dwelling may work at the business.
- Parking related to the business activities of the home-based business must comply with local zoning requirements. The business may not generate a need for parking greater in volume than a similar residence where no business is conducted. Local governments may regulate the parking or storage of heavy equipment at the business which is visible from the street or neighboring property. Vehicles and trailers used in connection with the business must be parked in legal parking spaces that are not located within the right-of-way, on or over a sidewalk, or on any unimproved surfaces at the residence.
- As viewed from the street, the use of the residential property must be consistent with the uses of the residential areas surrounding the property. Any external modifications to a home-based business must conform to the residential character and architectural aesthetics of the neighborhood. The home-based business may not conduct retail transactions at a structure other than the residential dwelling; however, incidental business uses and activities may be conducted at the residential property.
- All business activities must comply with any relevant local or state regulations concerning signage and equipment or processes that create noise, vibration, heat, smoke, dust, glare, fumes, or noxious odors. However, such regulations on a business with respect to noise, vibration, heat, smoke, dust, glare, fumes, or noxious odors, may not be more stringent than

those that apply to a residence where no business is conducted.

- All business activities must comply with any relevant local, state, and federal regulations concerning the use, storage, or disposal of hazardous materials. However, such regulations on a business may not be more stringent than those that apply to a residence where no business is conducted.

The bill does not supersede any current or future declaration of condominium adopted pursuant to ch. 718, F.S., cooperative document adopted pursuant to ch. 719, F.S., or declaration of covenants adopted pursuant to ch. 720, F.S. In addition, the bill does not supersede any local laws, ordinances, or regulations related to transient public lodging establishments that are not otherwise preempted under ch. 509, F.S.

I. Zoning Ordinance Amendment Analysis

In accordance with Appendix A. Zoning, Article XXI, Section 1(G)(2) of the Code of the City of Cocoa, the Planning and Zoning Board shall consider and study the following when an amendment to the zoning code is proposed:

- a. The need and justification for the change.*
- b. The relationship of the proposed amendment to the purposes and objectives of the comprehensive planning programs and to the comprehensive plan, with appropriate consideration as to whether the proposed changes will further the purposes of [the] zoning code and other codes, regulations, and actions designed to implement the comprehensive plan.*

Need and justification for change

In July of 2021 the State Legislature passed a new law in regards to home based businesses and where they are allowed to be located. In order for the City to be in alignment with the new state law it is necessary for Cocoa to modify the existing code with respect to home occupations.

Relationship and consistency with Comprehensive Plan Policies and Objectives

Objective 1.3.1: Economic Base Enhancement. The City of Cocoa shall seek to establish and maintain a stable and growing economic base through strategic incentive programs and diversification of the economy.

Policy 1.3.1.5: The City shall provide referral services to appropriate agencies for information and assistance to prospective and growing businesses in meeting zoning and infrastructure standards as well as requirements imposed by various government agencies.

Policy 1.1.10.10: The City will review the non-conforming section of the land development code to ensure its effectiveness.

BUDGETARY IMPACT:

N/A

PREVIOUS ACTION:

N/A

RECOMMENDED MOTION:

Staff recommends the Planning & Zoning Board recommend **APPROVAL** to City Council of Ordinance 11-2021 in regards to Home Occupations

ORDINANCE NO. ____-2021

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COCOA, BREVARD COUNTY, FLORIDA; AMENDING APPENDIX A-ZONING, ARTICLE XIII SUPPLEMENTARY DISTRICT REGULATIONS, SECTION 17 OF THE CITY CODE RELATED TO HOME BASED BUSINESSES (HOME OCCUPATIONS) TO COMPLY WITH RECENT LEGISLATION ADOPTED BY THE FLORIDA LEGISLATURE; MAKING OTHER CONFORMING AMENDMENTS TO THE SCHEDULE OF ZONING DISTRICT REGULATIONS AND CITY CODE TO COMPLY WITH SAID LEGISLATION; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, INCORPORATION INTO THE CODE, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City is granted the authority, under Section 2(b), Article VIII, of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, based on recent legislation adopted by the Florida Legislature during the 2021 session, it has been determined that it is warranted to provide amendments to the City Code regarding home-based businesses by repealing and replacing Appendix A-Zoning, Article XIII Supplementary District Regulations, Section 17 of the City Code and making other conforming amendments to the City Code to comply with the state preemption provided under Section 559.955, Florida Statutes; and

WHEREAS, pursuant to the Florida Community Planning Act and Appendix A-Zoning, Article XIX, Section 3 of the City Code, the City's Planning & Zoning Board/Land Planning Agency has reviewed and recommended adoption of this Ordinance at a duly held public meeting; and

WHEREAS, the City Council of the City of Cocoa, Florida, hereby finds this ordinance to be in the best interests of the public health, safety, and welfare of the citizens of Cocoa.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF COCOA, BREVARD COUNTY, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** The foregoing recitals are hereby fully incorporated herein by this reference as legislative findings and the intent and purpose of the City Council of the City of Cocoa.

Section 2. **Code Amendment.** Appendix A-Zoning, Article XIII Supplementary District Regulations, Section 17 of the Code of Ordinances, City of Cocoa, Florida, is hereby

amended as follows (~~strikeout~~ type indicates deletions from the City Code and underlined type indicates additions:

Sec. 17. - Home based businesses ~~occupations~~.

(a) Home based businesses shall be permitted in accordance with Section 559.955, Florida Statutes and other applicable law including any applicable provisions of the City Code.

(b) This section does not supersede or repeal:

(1) Any current or future declaration or declaration of condominium adopted pursuant to chapter 718, cooperative document adopted pursuant to chapter 719, or declaration or declaration of covenant adopted pursuant to chapter 720.

(2) Any provision of the City Code related to transient public lodging establishments, as defined in section 509.013(4)(a) 1., Florida Statutes that are not otherwise preempted under chapter 509, Florida Statutes.

~~occupations are permitted in dwellings or residential districts where the dwelling unit is the principal use under the following conditions:~~

~~(A) A home occupation application shall be submitted to the city's planning division on a form designated by the city. A nonrefundable fee of twenty-five dollars (\$25.00) shall be submitted with the application to cover administrative costs associated with the city's review of the application.~~

~~(B) The review of the application shall verify that the home occupation can be conducted at all times in the following manner:~~

~~1. A home occupation shall be conducted within a dwelling unit and shall be limited to the use of the premises for:~~

~~(a) Home office;~~

~~(b) Preparation and fabrication of a commodity commonly classified as arts and handicrafts to be sold off premises; and/or~~

~~(c) Use of the premises by a physician, surgeon, dentist, lawyer, clergyman or other professional persons for consultation or emergency treatment, but not for the general practice of a profession.~~

~~2. No persons other than members living in the dwelling (as a primary residence) shall be licensed at the premises.~~

~~3. No home occupation shall be conducted in any free standing or attached accessory building or structure (except garages used to store vehicles).~~

~~4. No home occupation shall occupy more than twenty percent (20%) of the floor area of the residence, located on the premises, exclusive of the area of any open porch or attached garage or similar space not suited or intended for occupancy as living quarters.~~

~~5. There shall be no exterior storage of any materials on the premises.~~

~~6. There shall be no commodity sold upon the premises in connection with such home occupation.~~

~~7. There shall be no advertisement which directs consumers to the premises or is located at the premises.~~

~~8. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference outside the dwelling. 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.~~

~~9. No home occupation shall interfere with the residential uses of adjoining property.~~

~~10. There shall be no additional and separate entrance incongruent with the residential structural design constructed for the purpose of conducting the home occupation.~~

~~11. 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.~~

~~12. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood. Any need for parking generated by the conduct of such home occupation shall be met off street and not located in any required yard. No additional driveways to serve such home occupation shall be permitted.~~

~~13. The home occupation shall not generate pedestrian or vehicular trips beyond that normally generated in a residential district based on trip generation data presented in the Institute of Transportation Engineers (ITE) Manual.~~

~~14. There shall be no hazardous or dangerous materials, animals, substances, chemicals, plants, machines and tools stored or used on the premises in conjunction with the home occupation.~~

~~15. A home occupation shall be subject to all applicable city local business tax receipts and other business taxes.~~

~~(C) Any home occupation approved pursuant to this section may be temporarily suspended or absolutely revoked or canceled by the city council as provided by Cocoa Code Chapter 12, section 12-10 if it is determined that the home occupation is not being conducted in accordance with the provisions of this section.~~

~~(D) Notwithstanding the foregoing, any person conducting a home occupation, whether lawfully licensed or not, in violation of this section may also be prosecuted pursuant to any applicable local or state law.~~

Section 3. Conforming Code Amendments. The following conforming amendments to specific provisions of the Code of Ordinances, City of Cocoa, Florida, which are expressly listed below are hereby adopted as follows (~~strikeout~~ type indicates deletions from the City Code and underlined type indicates additions, while asterisks (* * *) indicate a deletion from the Ordinance of text existing in the specific section listed below. It is intended that the text in specific sections listed below denoted by the asterisks and set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this ordinance:

(A) **Section 9-22 – Solid Waste franchise**

(b) *Definitions.* The following words and phrases contained in this agreement shall have the meaning ascribed in this section unless the context clearly indicates otherwise:

(26) *Household trash* shall mean the accumulation of paper, excelsior, rags, wooden or paper boxes and containers, sweepings, broken toys, tools, utensils, whole automobile tires (not to exceed an amount permitted by the designated facility), construction and demolition debris from "do-it-yourself" projects not to exceed two (2) cubic yards per customer per collection, and all other accumulations of a similar nature other than garbage and vegetative waste, which are usual to house keeping and, do-it-yourself home improvements, ~~and home occupations (as defined by city Code).~~

(B) The following sections of Appendix A-Zoning, Article XI. – Schedule of District Regulations:

(1) **Sec. 1. – District and intent - RE, Residential Estate**

(D) PROHIBITED USES AND STRUCTURES

~~(2) — Home occupations.~~

- (2) **Sec. 4A. – District and intent - RU-2-10, Low Density Single Family and Multiple-Family District**

- (C) SPECIAL EXCEPTIONS.

- (4) ~~Home occupations~~ Reserved.

- (3) **Sec. 13. – District and intent - CBD, Central Business District**

- (A) PRINCIPAL USES AND STRUCTURES.

- (16) ~~Home occupations.~~ Reserved.

Section 4. Repeal of Prior Inconsistent Ordinances and Resolutions. All prior inconsistent ordinances and resolutions adopted by the City Council, or parts of prior ordinances and resolutions in conflict herewith, are hereby repealed to the extent of the conflict.

Section 5. Incorporation Into Code. This Ordinance shall be incorporated into the City Code for the City of Cocoa, and any section or paragraph, number or letter, and any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical, and like errors may be corrected and additions, alterations, and omissions, not affecting the construction or meaning of this ordinance and the City Code may be freely made.

Section 6. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 7. Effective Date. This Ordinance shall become effective immediately upon adoption by the City Council of the City of Cocoa, Florida.

ADOPTED by the City Council of the City of Cocoa, Florida, in a regular meeting assembled on the ____ day of _____, 2021.

Michael C. Blake, Mayor

ATTEST:

Carie Shealy, City Clerk

A Daily Publication By:



CITY OF COCOA TE
65 STONE ST
COCOA FL 32922
ATTN ALEXANDRA BERNARD

STATE OF FLORIDA COUNTY OF BREVARD

Before the undersigned authority personally appeared said legal clerk, who on oath says that he or she is a Legal Advertising Representative of the FLORIDA TODAY a daily newspaper published in Brevard County, Florida that the attached copy of advertisement, being a Legal Ad in the matter of

PUBLIC NOTICE

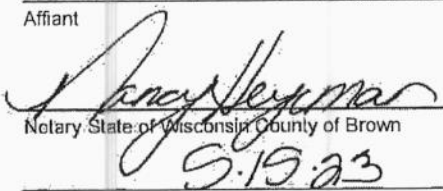
as published in FLORIDA TODAY in the issue(s) of

10/21/2021

Affiant further says that the said FLORIDA TODAY is a newspaper in said Brevard County, Florida and that the said newspaper has heretofore been continuously published in said Brevard County, Florida each day and has been entered as periodicals matter at the post office in MELBOURNE in said Brevard County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has never paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and Subscribed before me this 21st day of October, 2021 by legal clerk who is personally known to me

Affiant



Notary State of Wisconsin County of Brown

My commission expires

Publication Cost: \$623.60
Ad No: GCI0753764
Customer No: CIT180
PO#: PUBLIC NOTICE

NANCY HEYRMAN
Notary Public
State of Wisconsin

CITY OF COCOA

NOTICE OF ZONING TEXT CHANGE

NOTICE IS HEREBY GIVEN THAT
THE COCOA CITY COUNCIL
PROPOSE TO CONSIDER THE FOLLOWING:

Ordinance No. 11-2021

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COCOA, BREVARD COUNTY, FLORIDA; AMENDING APPENDIX A-ZONING, ARTICLE XIII SUPPLEMENTARY DISTRICT REGULATIONS, SECTION 17 OF THE CITY CODE RELATED TO HOME BASED BUSINESSES (HOME OCCUPATIONS) TO COMPLY WITH RECENT LEGISLATION ADOPTED BY THE FLORIDA LEGISLATURE; MAKING OTHER CONFORMING AMENDMENTS TO THE SCHEDULE OF ZONING DISTRICT REGULATIONS AND CITY CODE TO COMPLY WITH SAID LEGISLATION; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, INCORPORATION INTO THE CODE, SEVERABILITY, AND AN EFFECTIVE DATE.

PLANNING AND ZONING BOARD WILL HEAR THIS ITEMS ON:

November 3, 2021

CITY COUNCIL WILL HEAR THIS ITEM ON:

December 14, 2021

ALL HEARINGS WILL BE AT 6:00 P.M. OR SOON THEREAFTER IN THE
COCOA CITY HALL COUNCIL CHAMBERS LOCATED AT
65 STONE STREET, COCOA, FL

Members of the public may view the meeting agenda, ordinances, project applications, supporting documents, and staff reports on the City's website at the following link prior to attending or commenting: City of Cocoa meeting calendar at <https://cocoa.legistar.com/Calendar.aspx>

These documents and information pertaining to the above may also be inspected at the Community Services Department, between 9:00 a.m. and 5:00 p.m., Monday through Friday, or by phoning (321) 433-8535.

Interested parties are invited to attend this public meeting in person. Additionally, interested persons may view or listen to the meeting electronically at the following internet sites:

- (1) <https://tinyurl.com/s5e875r> or
- (2) <https://cocoa.legistar.com/DepartmentDetail.aspx?ID=26365&GUID=FF9D3369-D354-4FAB-800A-57D0AEE30153&Mode=MainBody>

However, the City is not responsible for technical difficulties that may occur while attempting to view or listen to the meeting on the internet.

Interested parties may also submit their written comments or questions regarding the meeting prior to the meeting through Email at meetings@cocoafl.org, or via E-comments through the online agenda. Any electronic comments submitted will be made part of the meeting record. Written comments may also be mailed to City of Cocoa, Planning & Zoning Manager, 65 Stone Street, Cocoa, Florida 32922. Written comments or questions not relevant to the Council meeting agenda will not be made part of the meeting record but will be maintained as public record.

This is a public meeting. Interested parties are hereby advised that they may appear at said meeting and be heard. The facility wherein this public meeting will be held is accessible to the physically handicapped. In accordance with the Americans With Disabilities Act, persons needing assistance to participate in any of these proceedings should contact the City Clerk of the City of Cocoa, listed below, at least 48 hours prior to the meeting: Carie Shealy, City Clerk, 65 Stone Street, Cocoa, by telephone at (321) 433-8484 or via email at cshealy@cocoafl.org.

Pursuant to Section 286.0105, Florida Statutes, the City hereby advises the public that if a person decides to appeal any decision made by the P&Z Board/LPA or City Council with respect to any matter considered at its meeting or hearing, that person will need a record of the proceedings and for such purpose, affected persons may need to assure that a verbatim record of the proceedings is made, and such record shall include the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission into evidence of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals otherwise not allowed by law.

The City Council reserves the right to continue or postpone hearings to a date certain without re-advertising.



Legislation Text

File #: 21-721, Version: 1

PLANNING & ZONING BOARD/LOCAL PLANNING AGENCY AGENDA ITEM

Memo Date: October 27, 2021
Agenda Date: November 3, 2021
Prepared By: Alix Bernard, Senior Planner
Through: Charlene Neuterman, Interim Community Service Director
Requested Action:

CONSIDERATION OF A COMPREHENSIVE PLAN TEXT AMENDMENT (Ordinance 15-2021)
consistent with Florida Statute, Section 163.3177, adopting a Private Property Rights Element as a
new section into the City of Cocoa's Comprehensive Plan.

BACKGROUND:

On July 1, 2021, The Florida Legislature passed a new law (Chapter 2021-195, Laws of Florida), requiring that local governments must adopt a Private Property Rights Element into their comprehensive plans. Each local government must adopt a property rights element in its comprehensive plan by the earlier of the date of its adoption of its next proposed plan amendment that is initiated after July 1, 2021, or the date of the next scheduled evaluation and appraisal of its comprehensive plan pursuant to s. 163.3191. The proposed ordinance utilizes the "statement of rights" suggested by the new law. The City is permitted to adopt its own element, but any element the City chooses to adopt may not conflict with the statement of rights provided in the statute.

The City's Comprehensive Plan is the all-encompassing view of how Cocoa will grow and evolve in the future over the next ten to twenty-year period. The City on average has between two to four comprehensive plan amendments per year.

Below is the proposed new element:

XV - PROPERTY RIGHTS ELEMENT

GOAL 15.1: The City will respect judicially acknowledged and constitutionally protected private property rights.

Objective 15.1.1: The City will consider when appropriate and applicable judicially acknowledged and constitutionally protected private property rights when making decisions.

Policy 15.1.1.1: In accordance with Florida law requiring governmental entities to respect judicially acknowledged and constitutionally protected private property rights, the following rights shall be considered in local decision making:

- A. The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.
- B. The right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.
- C. The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.
- D. The right of a property owner to dispose of his or her property through sale or gift.

Consistency with Code of the City of Cocoa

Planning & Zoning staff has addressed the criteria contained in Chapter 15, Article II, Sections 15-10 and 15-11 below:

- a. Whether the proposal favorably or unfavorably impacts the city's budget, or the economy of the region

Staff Finding: The proposed addition of private property rights element will not impact the city's budget or the economy of the region.

- b. Whether the proposal will diminish the service level of public facilities

Staff Finding: The proposed private property rights element will not negatively impact or diminish the service level of public facilities.

- c. Whether the proposal favorably or unfavorably impacts the environment, or the natural or historical resources of the city or the region

Staff Finding: The text amendment will not impact any natural or historical resources.

- d. Whether the proposal is consistent with goals, policies, and objectives of the state comprehensive plan set forth in Chapter 187, Florida Statutes, and the East Central Florida Comprehensive Regional Policy Plan, Florida Administrative Code

14) State Comprehensive Plan, Chapter 187,201(14) Private Property Right

(a) Goal.-Florida shall protect private property rights and recognize the existence of legitimate and often competing public and private interests in land use regulations and other government action.

(b) Policies.-

- 1. Provide compensation, or other appropriate relief as provided by law, to a landowner for any governmental action that is determined to be an unreasonable exercise of the state's police power so as to constitute a taking.

2. Determine compensation or other relief by judicial proceeding rather than by administrative proceeding.

3. Encourage acquisition of lands by state or local government in cases where regulation will severely limit practical use of real property.

Staff Finding: The proposed new element ensures that their judicially acknowledged and constitutionally protected rights are secure.

- e. Whether the proposal will favorably or unfavorably affect the city's ability to provide adequate public facilities, and whether the proposal will reduce the level of service for affected public facilities below the level of service set in the comprehensive plan

Staff Finding: The proposed new element would not alter the City's ability to provide service capacity to lands.

- f. Whether the proposal is incompatible with surrounding neighborhoods and land uses

Staff Finding: The proposed new element will not change the FLU designation of any parcel of land.

- g. Whether the proposal will have a favorable or adverse effect on the ability of people to find adequate housing reasonably accessible to their places of employment

Staff Finding: The proposed new element will not affect the ability of people to find adequate housing reasonably accessible to their places of employment.

- h. If the amendment being requested is consistent with all the elements of the comprehensive plan.

Staff Finding: The proposed new element is consistent with the following Comprehensive Plan policies:

Objective 1.1.5: Neighborhood Protection. The city shall ensure that additional growth and development will be respectful of established neighborhoods that define much of the City's character.

BUDGETARY IMPACT:

N/A

PREVIOUS ACTION:

N/A

RECOMMENDED MOTION:

Staff recommends the Planning & Zoning Board recommend **APPROVAL** to City Council of the Comprehensive Plan Text Amendment consistent with Florida Statute, section 163.3177(6)(i), adopting a new Private Property Rights Element to the City's Comprehensive Plan.

ORDINANCE NO. ____-2021

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COCOA, BREVARD COUNTY, FLORIDA, AMENDING THE TEXT OF THE CITY'S COMPREHENSIVE PLAN TO INCLUDE A PROPERTY RIGHTS ELEMENT AS REQUIRED BY LAW; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, INCORPORATION INTO THE COMPREHENSIVE PLAN, SEVERABILITY AND AN EFFECTIVE DATE AND LEGAL STATUS OF THE PLAN AMENDMENT.

WHEREAS, section 163.3161 et. seq., Florida Statutes, established the Community Planning Act, which was formerly known as the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, the Community Planning Act requires each municipality in the State of Florida to prepare, adopt, and update a Comprehensive Plan; and

WHEREAS, during the 2021 Legislative Session, the Florida Legislature adopted, and Governor DeSantis signed into law, Chapter 2021-195, Laws of Florida requiring local governments to amend their comprehensive plans to include a property rights element; and

WHEREAS, the City of Cocoa recognizes the importance of property rights and desires to expeditiously comply with the new law by adding a property rights element to its Comprehensive Plan; and

WHEREAS, in accordance with the provisions of the Community Planning Act, the City's Land Planning Agency has reviewed and made a recommendation regarding this Ordinance at a duly held public meeting as required by law; and

WHEREAS, the City Council of the City of Cocoa held two duly noticed public hearings on the proposed amendment set forth hereunder and considered findings and advice of staff, citizens, and all interested parties submitting written and oral comments and supporting data and analysis, and after complete deliberation, hereby approves and adopts the Comprehensive Plan Amendment set forth hereunder; and

WHEREAS, the City Council of the City of Cocoa, Florida, hereby finds this ordinance to be in the best interests of the public health, safety, and welfare of the citizens of Cocoa.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COCOA HEREBY ORDAINS, AS FOLLOWS:

Section 1. **Recitals.** The foregoing recitals are hereby fully incorporated herein by reference as legislative findings of the City Council of Cocoa.

Section 2. **Authority.** This Ordinance is adopted in compliance with, and pursuant to, the Community Planning Act, sections 163.3161 et. seq., Florida Statutes, and Chapter 2021-195, Laws of Florida.

Section 3. **Purpose and Intent.** It is hereby declared to be the purpose and intent of this Ordinance to adopt a comprehensive plan amendment incorporating the revisions stated herein as part of the City of Cocoa Comprehensive Plan.

Section 4. **Addition of Property Rights Element.** The City of Cocoa Comprehensive Plan is hereby amended as set forth below (underlined type indicates additions and ~~strikeout~~ type indicates deletions, while asterisks (* * *) indicate a deletion from the text of this Ordinance that shall remain unchanged in the City's Comprehensive Plan):

City of Cocoa Comprehensive Plan

* * *

XV – PROPERTY RIGHTS ELEMENT

GOAL 15.1: The City will respect judicially acknowledged and constitutionally protected private property rights.

Objective 15.1.1: The City will consider when appropriate and applicable judicially acknowledged and constitutionally protected private property rights when making decisions.

Policy 15.1.1.1: In accordance with Florida law requiring governmental entities to respect judicially acknowledged and constitutionally protected private property rights, the following rights shall be considered in local decisionmaking:

- A. The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.
- B. The right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.
- C. The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.

D. The right of a property owner to dispose of his or her property through sale or gift.

Section 5. Repeal of Prior Inconsistent Ordinances and Resolutions. All prior inconsistent ordinances and resolutions adopted by the City Council, or parts or ordinances and resolutions in conflict herewith, are hereby repealed to the extent of the conflict.

Section 6. Incorporation into Comprehensive Plan. Upon the effective date of the Comprehensive Plan Amendment adopted by this Ordinance, said Amendment shall be incorporated into the City of Cocoa Comprehensive Plan and any section or paragraph number or letter and any heading may be changed or modified as necessary to effectuate the foregoing.

Section 7. Severability. If any section, subsection, sentence, clause, phrase, word, or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 8. Effective Date. The effective date of the Comprehensive Plan Amendment adopted by this Ordinance shall be thirty-one (31) days after the state land planning agency notifies the City that the plan amendment package is complete pursuant to section 163.3184(3)(c)(4.), Florida Statutes. If the plan amendment is timely challenged, the plan amendment shall not become effective until the state land planning agency or the Administration Council enters a final order determining the adopted amendment to be in compliance. No development orders, development permits, or land use dependent on this plan amendment may be issued before it has become effective. After and from the effective date of this plan amendment, the Comprehensive Plan Amendment set forth herein shall amend the City of Cocoa Comprehensive Plan and become a part of that plan and the plan amendment shall have the legal status of the City of Cocoa Comprehensive Plan, as amended.

ADOPTED by the City Council of the City of Cocoa, Florida, in a regular meeting assembled on the ____ day of _____, 2021.

Michael C. Blake, Mayor

ATTEST:

CARIE SHEALY, MMC
City Clerk

First Reading:
Legal Ad Published:
Effective Date:

CITY OF COCOA

NOTICE OF PUBLIC HEARING

THE PLANNING & ZONING BOARD/LOCAL PLANNING AGENCY AND THE COCOA CITY COUNCIL

PROPOSE TO CONSIDER THE FOLLOWING:

Ordinance 15-2021 Private Property Rights

An Ordinance of The City Council of The City of Cocoa, Brevard County, Florida, amending the text of The City's Comprehensive Plan to include a Property Rights Element as required by law; providing for the repeal of prior inconsistent ordinances and resolutions, incorporation into The Comprehensive Plan, severability and an effective date and legal status of the plan amendment.

PLANNING AND ZONING BOARD WILL CONSIDER THESE ITEMS ON NOVEMBER 3, 2021

CITY COUNCIL WILL CONSIDER THESE ITEMS ON DECEMBER 14, 2021

AT 6:00 P.M. OR SOON THEREAFTER IN THE COCOA CITY HALL COUNCIL CHAMBERS LOCATED AT 65 STONE STREET, COCOA, FL

Members of the public may view the meeting agenda, ordinances, project applications, supporting documents, and staff reports on the City's website at the following link prior to attending or commenting: City of Cocoa meeting calendar at <https://cocoa.legistar.com/Calendar.aspx>

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Interested parties are invited to attend this public meeting in person. Additionally, interested persons may view or listen to the meeting electronically at the following internet sites:

- (1) <https://tinyurl.com/s5e875r> or
- (2) <https://cocoa.legistar.com/DepartmentDetail.aspx?ID=26365&GUID=FF9D3369-D354-4FAB-800A-57D0AEE30153&Mode=MainBody>

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