



**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION
STAFF REPORT FOR MODIFICATION OF UNIFIED LAND DEVELOPMENT CODE
March 21, 2012
PLANNING AND LAND DEVELOPMENT REGULATION BOARD**

OVERVIEW

As a result of the 2011 Legislative session, the Florida Legislature approved House Bill 7209, creating a new section that exempts cottage food production within private kitchens from further regulation as long as:

- All public health standards are complied with;
- Types of products are limited (no meat, dairy, or other perishable products);
- Sales do not exceed \$15,000 per year;
- No sales are made from the Internet, mail order or wholesale;
- Foods follow standardized labeling, including font size, allergen information, and clearly state "*not subject to Florida's food safety regulations*";
- Only products prepared on premise can be sold;
- All other regulations are complied with, including applicable County and municipal laws, and therefore does not pre-empt the City's Unified Land Development Code;
- The Department of Agriculture and Consumer Services (DACs), upon receipt of a complaint, can inspect the premise and possibly find (up to \$5,000.00).

Currently the Unified Land Development Code (ULDC) prohibits food preparation from obtaining a home occupancy permit.

The City received correspondence requesting that the ULDC be modified to allow production of cottage foods as a permissible home occupancy use. A copy of the request is attached. On February 14, 2011, City Council heard a presentation regarding the positive and negative aspects of modifying the ULDC to allow cottage food production. It was determined that the request had merit for further discussion, and Council directed staff to prepare an ordinance for their consideration.

Chapter 2, Part I, Section 2.02.01.D. authorizes City Council to amend the ULDC, after review and recommendation of the Planning and Land Development Regulation Board.

REQUESTED ACTION

Application Type: This is a request to modify Unified Land Development Code Chapter 4, Section 4.12.03.B1. and Chapter 4, Section 4.12.05.B.1. to allow cottage food production as a home occupation, in accordance with Section 500.80, Florida Statutes and the requirements promulgated by the Department of Agriculture and Consumer Services.

The ULDC language that would accomplish the change would read as follows:

Chapter 4, Section 4.12.03.B. Prohibited Home Occupations

The following uses are prohibited home occupations; however, this list is not all-inclusive and other home occupations may be prohibited by the Land Use Administrator based upon the character and similarity of use, with the determination being subject to appeal as set forth in Chapter 2.

- 1. Food Preparation, except as allowed in accordance with Section 500.80, Florida Statutes, as may be amended; however, sale of food to purchasers may not take place at the home.***

Chapter 4, Section 4.12.05 Inspection and Revocation

B. Violations and Revocation

- 1. The Code Enforcement Board shall determine violations, fines, or penalties for violations of this Code relating to home occupations. Such violations shall be treated as an unpermitted use within the zoning classification. The Code Enforcement Board shall have the authority to revoke development orders for home occupations, except in the case of cottage food producers, as defined in Section 500.80, Florida Statutes. If the Department of Agriculture and Consumer Services inspects and determines a cottage food producer is unlawfully operating, the home occupation development order shall automatically extinguish.***

Recommendation: Planning and Land Development Regulation Board recommend to City Council denial of the requested amendment to the ULDC.

PUBLIC PARTICIPATION

Land Development Code (LDC) Section 2.05.02 Neighborhood Meeting Requirements

Neighborhood meeting requirements are not applicable as this is a City-wide, as opposed to a specific request. The individuals who requested the change to the ULDC have been notified of the meeting. In addition, a legal advertisement was published in the March 7 Flagler News Tribune.

Land Development Code (LDC) Section 2.05.03. Public Hearing Notice Requirements

The individuals who requested the change to the ULDC have been notified of the meeting. In addition, a legal advertisement of the proposed modification to the ULDC was published on March 7, 2012, in the Flagler News Tribune providing further opportunity for public participation.

BACKGROUND:

Food safety is regulated by the Federal government. The United States Food and Drug Administration (FDA) oversees the **retail** food supply chain. To enhance food safety, the FDA publishes the Food Code to provide guidance to food producers throughout the retail food supply chain. The Florida Department of Agriculture and Consumer Services, based upon the guidance provided by the FDA in the Food Code, issued in September, 2011, a pamphlet that addresses how individuals can comply with the recently adopted legislation. A copy of the pamphlet is attached.

ANALYSIS:

The purpose of allowing Home Occupations is to provide a “doing business address” for low impact business activities while ensuring that the surrounding residential area is not negatively impacted. There are three types or classes of home occupations, with Class 1 being the least intense and Class 3 being the most intense and restricted to the larger, estate sized residential properties.

Pursuant to Chapter 4.12.03, all Home Occupations must:

1. Be completely subordinate to the residential nature of the home
2. Not change the structural form of the home
3. Not create noise, vibration, glare, fumes, odors, dust, or smoke that is detectable to the normal senses at the lot line or beyond the exterior of any common walls
4. Not use equipment which creates off-site line voltage fluctuations or visual or audible interference with off-site radio or television receivers
5. Not adversely affect public safety through the storage or generation of explosive, flammable, or hazardous materials in quantities which could constitute a neighborhood danger based on the required submittal of MSDS sheets or the determination of the City Fire Marshal
6. The applicant shall be the primary resident of the home.

Consideration of the following is provided to assist the PLDRB in its determination:

A. Whether the request is consistent with all adopted elements of the Comprehensive Plan and whether it furthers the goals and objectives of the Comprehensive Plan.

Staff Finding: The request to allow cottage food production as a home occupation furthers economic development because allowing cottage food production as a home occupation lowers barriers to entry into the retail food markets. Otherwise, individuals have to procure time at certified commercial kitchens to produce baked foods for sale to the general public. Cottage food production would allow for experimentation with different foods and recipes with limited start up costs to determine what type of product would have market appeal.

The Housing Element addresses neighborhood compatibility issues through Objective 3.3.5 – Protect Residential Areas from Inappropriate Land Uses, which states “***Protect predominately residential areas from the intrusion of incompatible or more intensive land uses.***”

B. Its impact upon the environment or natural resources.

Staff Finding: Not applicable, as the use would theoretically occur within an existing single family residence.

C. Its impact on the economy of any affected area.

Staff Finding: The ULDC change may result in the creation of niche markets and businesses to service those markets. The change may also result in competition to existing businesses in established storefronts that do not have access to the same markets.

D. Its impact upon necessary governmental services such as schools, sewage disposal, potable water, drainage, fire, and police protection, solid waste or transportation systems.

Staff Finding: There are no anticipated impacts to infrastructure provided the criteria and guidance issued by the Federal and State of Florida are adhered to by any operator.

E. Any changes in circumstances or conditions affecting the area.

Staff Finding: The change in circumstances is the State of Florida recognizing that cottage food production may occur, subject to local permitting requirements.

F. Compatibility with proximate uses and development patterns, including health, safety, and welfare of surrounding residents.

Staff Finding: Effective monitoring of cottage food production would require entering homes to verify food safety, which the City lacks the authority, technical expertise and manpower to do. The State of Florida has assigned its right of inspection to the Department of Agriculture and Consumer Services, which is only triggered if a complaint is received. No inspection of the food production premise will be conducted by the Flagler County Health Department or the City of Palm Coast. All labeling requirements will be the responsibility of the cottage food producer. The DACS is responsible for this aspect of food safety and **may** investigate, based upon receipt of a complaint.

The ULDC states home occupations can be further regulated or prohibited by the Land Use Administrator if it is determined that the use is disruptive to the neighborhood in which it is located. One additional standard, to address neighborhood compatibility, prohibits sales from home to prevent or reduce traffic congestion, is included if the code change to allow cottage foods is approved.

G. Whether it accomplishes a legitimate public purpose.

Staff Finding: A successful cottage food producer will fill a market niche and create supplemental income. The public will have access to home baked goods. The safety of the food supply chain will be dependent upon the honor system for compliance and individual responsibility for knowing the rules.

RECOMMENDATION:

Staff recommends that the Planning and Land Development Regulation Board recommend to City Council denial of the request to allow cottage food production as a home occupation.