



**ZONING MAP CHANGE
STAFF REPORT**

City Council Meeting Date:
September 10, 2013

Council District ALL

Zoning Commission Recommendation:

Approval by a vote of 8-0

Opposition: none

Continued	Yes ___ No <u>X</u>
Case Manager	<u>Jocelyn Murphy</u>
Surplus	Yes ___ No <u>X</u>
Council Initiated	Yes ___ No <u>X</u>

Owner / Applicant: City of Fort Worth Planning and Development Department

Site Location: Citywide Mapsco: N/A

Proposed Use: An Ordinance amending the Zoning Ordinance of the City of Fort Worth, being Ordinance No. 13896, as amended, codified as Appendix "A" of the Code of The City of Fort Worth (1986), to amend:

- Section 5.116a "Home Occupation" to provide that a Cottage Food Production Operation may sell directly to the consumer

To review the proposed amendments:

<http://fortworthtexas.gov/planninganddevelopment/zoningcommission.aspx>

Request: TEXT AMENDMENT: RETAIL SALES FOR COTTAGE INDUSTRIES

Background:

The State Legislature recently approved an amendment that minimally affects the Zoning Ordinance, however an amendment is proposed to align the city's regulation with the state requirements. The City's regulation of home occupations does not allow direct sales to the general public but does allow sales through phone, email, mail, internet or off-site sales parties.

H.B. 970 (E. Rodriguez) – Cottage Food Regulation: (05/26/2013 Sent to the Governor) provides that: (1) additional items are added to the list of cottage foods, including candy, nuts, snacks, nut butters, pies, and other items, *meaning the production and sale of these items cannot be regulated by a city or local health department*; (2) a city cannot prohibit the use of a home for cottage food production through zoning; (3) a person can bring a nuisance or other tort action against an individual arising out of the individual's use of their home for cottage food production; (4) a person who operates a cottage food production operation must have completed a food safety education course or food handler accreditation course or be supervised by someone who has the educational requirements; and (5) a cottage food production may not sell potentially hazardous foods such as some proteins, baked goods, raw milk products, or ice products; a city, local governmental entity, or a local health department is prohibited from regulating a cottage food production operation. (Effective September 1, 2013)

The Zoning amendment will amend the Home Occupations Supplemental Standards to permit direct sales of Cottage Foods only.

Attachments: Proposed Ordinance
Minutes of the Zoning Commission meeting

**COTTAGE FOOD
ORDINANCE NO. _____**

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF FORT WORTH, BEING ORDINANCE NO. 13896, AS AMENDED, CODIFIED AS APPENDIX "A" OF THE CODE OF THE CITY OF FORT WORTH, BY AMENDING SECTION 5.116A "HOME OCCUPATION" TO PROVIDE THAT A COTTAGE FOOD PRODUCTION OPERATION MAY SELL DIRECTLY TO THE CONSUMER; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, in 2011 the Texas Legislature passed Senate Bill (SB) 81 adopting minimum standards for cottage food production operations and providing that cottage food production operations may not sell through the internet; and

WHEREAS, in 2013 the Texas Legislature passed House Bill (HB) 970 further regulating cottage food production operations to limit the control of local municipal governments over home-based cottage food production operations and to prohibit the sale of certain products through the internet, mail-order or by wholesale; and

WHEREAS, state law restricting the sale of these foods to such an individual's home has created a conflict with the City's regulation of home occupations which does not allow direct sales to the general public but does allow sales through phone, email, mail, internet or off-site sales parties; and

WHEREAS, it is advisable to revise the regulations for home occupations to allow home-based cottage food production operations to sell items as defined in Health and Safety Code Section 437.001 (2-b) to the consumer;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF FORT WORTH, TEXAS**

SECTION 1.

Chapter 5 “Supplemental Use Standards” of Ordinance No. 13896, the Zoning Ordinance of the City of Fort Worth, is hereby amended to revise Article 1, “Standards for Selected Uses”, Section 5.116A “Home Occupations” subsection A.5. to read as follows:

5.116A Home Occupations

5. The direct sale of commodities, goods, wares, materials, merchandise or products to the general public is prohibited, however orders may be filled on the premises to persons by prior individual oral or written invitation or if placed earlier by a customer by phone, mail, internet, or off-site sales parties. Products from a cottage food production operation as defined in the Texas Health and Safety Code Section 437.001.(2-b) may be sold directly to the consumer.

SECTION 2.

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Fort Worth, Texas (1986), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 3.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this

ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 4.

Any person, firm, or corporation, who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Two Thousand Dollars (\$2,000.00) for each offense. Each day that a violation exists shall constitute a separate offense.

SECTION 5.

All rights and remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the provisions of Ordinances No. 3011, 13896 and any other ordinances affecting zoning which have accrued at the time of the effective date of this ordinance, and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 6.

The City Secretary of the City of Fort Worth, Texas, is hereby directed to publish the caption, penalty clause and effective date of this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas, as authorized by Section 52.013, Texas Local Government Code.

SECTION 7.

All other provisions of the Zoning Ordinance of the City of Fort Worth not herein amended shall remain in full force and effect.

SECTION 8.

This ordinance shall take effect upon adoption and publication as required by law.

APPROVED AS TO FORM AND LEGALITY:

By: _____
Assistant City Attorney

Mary J. Kayser, City Secretary

ADOPTED: _____

EFFECTIVE: _____

Mr. Flores asked Mr. Paniagua about the meeting held with the neighborhood and one of the items mentioned was the parking deficit of 219 parking spaces of which 754 are required. Mr. Paniagua said that is something they still need to work through with the neighborhood. He stated there are utility easements along the southern boundary restricting any structures. Mr. Flores said there is still land available that can align with the vision encompassed for that general area for a university campus, recreational sports arena.

Motion: Following brief discussion, Mr. Flores recommended approval of the request, seconded by Mr. Genua. The motion carried unanimously 8-0.

<i>Document received for written correspondence</i>				<i>ZC-13-117</i>		
Name	Address	In/Out 300 notification area	ft		Position on case	Summary
Ron Shearer/Inter-District 2 Alliance/Greater North Fort Worth Assoc	NA	Out			Support	Sent letter in
Jason Arechiga/NRP Group	NA	Out			Support	Present but did not speak

14. ZC-13-120 City of Fort Worth Planning & Development Text Amendment: Model Homes (CD All) An Ordinance amending the Zoning Ordinance of the City of Fort Worth, being Ordinance No. 13896, as amended, codified as Appendix “A” of the Code of The City of Fort Worth (1986), to amend:

- **Section 5.403 “Model Home” to provide for when and where a model home may be built; provide for an increase in the amount of time a model home may be used as such**

Jocelyn Murphy, Planning Manager, City of Fort Worth explained to the Commissioners the change to the text.

Motion: Following brief discussion, Ms. Reed recommended approval of the request, seconded by Mr. Genua. The motion carried unanimously 8-0.

15. ZC-13-121 City of Fort Worth Planning & Development Text Amendment: Cottage Foods (CD All) An Ordinance amending the Zoning Ordinance of the City of Fort Worth, being Ordinance No. 13896, as amended, codified as Appendix “A” of the Code of The City of Fort Worth (1986), to amend:

- **Section 5.116a “Home Occupation” to provide that a Cottage Food Production Operation may sell directly to the consumer**

Jocelyn Murphy, Planning Manager, City of Fort Worth explained to the Commissioners the change to the text.

Motion: Following brief discussion, Mr. Hollis recommended approval of the request, seconded by Mr. Flores. The motion carried unanimously 8-0.