

**CITY OF LAKEWAY, TEXAS**

**ORDINANCE NO. 2022-08-01-01**

**AN ORDINANCE OF THE CITY OF LAKEWAY, TEXAS, AMENDING THE CODE OF ORDINANCES, TITLE II: BUILDING AND DEVELOPMENT REGULATIONS; CHAPTER 30: ZONING; ARTICLE 30.05: SPECIAL USE PERMITS; SECTION 30.05.002: SPECIAL USE PERMITS; SECTION 30.05.003: GENERAL CRITERIAL APPLICABLE TO ALL SPECIAL USES; SECTION 30.05.004: CRITERIA APPLICABLE TO ALL INDIVIDUAL HOME OCCUPATION PERMITS; ADDING SECTION 30.05.004.6: CRITERIA SPECIFICALLY APPLICABLE TO HOME OCCUPATION PERMITS FOR HOME DAYCARE OPERATIONS; AND TITLE II: BUILDING AND DEVELOPMENT REGULATIONS; AMENDING CHAPTER 22: GENERAL REGULATIONS; SECTION 22.02.001: DEFINITIONS; AND PROVIDING FOR SAVINGS, SEVERABILITY, REPEALER, AND AN EFFECTIVE DATE.**

**WHEREAS,** the City Council of the City of Lakeway, Texas (“City”) seeks to provide for the health, safety and welfare of its citizens and provide for the orderly development and use of land within its corporate limits and its extraterritorial jurisdiction; and

**WHEREAS,** the City Council seeks to promote orderly and safe use of property within the City by regulating zoning use, and the regulations established are in furtherance of the public interest, for the good government, peace, and order of the City.

**WHEREAS,** Pursuant to Texas Local Government Code Title 7 Regulation of Land Use, Structures, Business, and Related Activities and Sections 2.01 and 2.02 of the Charter of the City, the City has the general authority to regulate businesses and business uses; and

**WHEREAS,** the Council further deems it necessary to monitor all commercial business locations and operating status for the enhanced economic development of the City.

**NOW, THEREFORE BE IT ORDAINED** by the City Council of the City of Lakeway, Texas:

**1. FINDINGS OF FACT**

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

## 2. AMENDMENT

Title II (Building and Development Regulations), Chapter 30 (Zoning), Article 30.05 (Special Use Permits), Sections 30.05.002 (special use permits), and 30.05.004 (criteria applicable to all individual home occupation permits) of the City of Lakeway Code of Ordinances are hereby amended as follows:

### “Sec. 30.05.002 Special use permits

(a) Permit required.

(1) No special use shall be established, operated, or maintained except as authorized by a special use permit issued in accordance with the requirements of this section.

(2) A special use permit may be issued only for the special uses specified in this chapter, and only for the district where it is authorized. A special use permit may be issued by:

(A) The city council, after a recommendation on the proposed permit from the zoning and planning commission, and following a public hearing, for all special use permits except those listed in subsection (B) ~~or (C)~~ below; or

~~(B) The zoning and planning commission, after a public hearing, for those permits for home occupation permits in residential zoning districts, when requested by the code official; or~~

~~(C) The code official, for home occupation permit applications which comply with all provisions of sections 30.05.003, 30.05.004, and 30.05.005 in addition to renewals subject to the provisions of subsection (f)(2)(A) of this section. The code official may refer any such application to the zoning and planning commission for determination, shall approve any application for a home occupation permit that complies with all provisions of these sections. If the code official believes that an application does not comply with all provisions of these sections, the code official shall recommend denial of the application. An applicant may appeal a code official’s recommendation of denial to the zoning and planning commission, which will consider the appeal and issue a recommendation to the city council. The city council will issue the final determination of the appeal, after considering the recommendation of the planning and zoning commission and holding a public hearing.~~

(3) The issuing authority may impose conditions on the issuance of a requested special use permit. Such conditions shall be reasonably related to the criteria applicable to special use permits as described in section 30.05.003, 30.05.004, or 30.05.004.5 as applicable.

(b) Application. An application for a special use permit shall be made in writing in a form prescribed by the city and shall be accompanied by such information as may be requested (including a site plan, if required) in order to properly review the proposed permit. Such information may include, but is not limited to, site and building plans, drawings and elevations,

and operational data. The applicant, or its representative, for a special use permit shall attend all public hearings during which ~~his~~ the application will be discussed.

(c) Report by city staff. Whenever a special use permit application is to be considered by the zoning and planning commission or the city council, a designated member of the building & development services department shall visit the sites of the proposed special permits and the surrounding area and shall prepare a report of findings to be given to the zoning and planning commission and the city council, as the case may be.

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### **Sec. 30.05.003 General criteria applicable to all special uses**

(a) A proposed special use permit must comply with all the following criteria:

~~(1) The appearance, size, density and operating characteristics for the proposed permit are compatible with the surrounding neighborhood and uses;~~

~~(2) The issuance of the proposed permit will not have an adverse effect on the value of surrounding properties nor impede their proper development;~~

~~(2) The issuance of the proposed permit will not create a nuisance nor otherwise interfere with a neighbor's enjoyment of his property or operation of his business as defined in Section 22.02.001 of this Code;~~

~~(3) The traffic that the proposed permit use for which the permit is sought cannot reasonably be expected to generate on existing streets will not create nor add significantly to traffic congestion, a safety hazard, or a parking problem on existing residential streets in the area nor will it disturb the peace and quiet of the neighborhood. A traffic impact analysis may be required by the city engineer or code official if the code official or the city engineer determines that the proposed use is likely to create or significantly add to congestion, a safety hazard, or a parking problem; and~~

~~(4) The proposed permit complies with all other applicable ordinances and regulations.~~

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### **Sec. 30.05.004 Criteria applicable to individual home occupation permits**

A proposed home occupation must comply with all of the following specific criteria as well as the foregoing general criteria applicable to Special Use Permits generally (see Sections 30.05.002 and 30.05.003 of this Code):

~~(1) The occupation shall produce no alteration or change in the character or exterior appearance of the building from that of a dwelling unit for human habitation;~~

~~(2) Such use shall be incidental and secondary to the use of the premises for residential purposes and shall not utilize an area exceeding twenty percent (20%) of the gross floor area of the dwelling unit;~~

~~(3) The occupation use shall be carried on by no other person(s) than a member(s) of the family residing on the premises. No employees may report to the residence for work, gather at the residence for any reason, or park vehicles at the residence;~~

- (4) ~~The occupation shall not involve the provision of services or the sale of merchandise to a customer on the premises;~~
- (5) ~~There shall be no storage of merchandise on the property (within or outside of buildings) connected with the business;~~
- (6) ~~The occupation shall be conducted entirely within a dwelling unit, which must be the bona fide residence of the permittee;~~
- (7) ~~No equipment or materials associated with the occupation shall be displayed or stored where visible from anywhere outside the home;~~
- (8) ~~The occupation shall not produce nuisances as defined herein or wastewater runoff outside the dwelling unit or on property surrounding the dwelling unit;~~
- (9) ~~The occupation shall not cause a noticeable increase in the consumption of any utilities;~~
- (10) ~~The occupation shall not disturb or interfere with permitted uses in the neighborhood, nor make the adjoining premises unsuitable for their permitted uses;~~
- (11) ~~The occupation shall not have a measurable effect on property values in the area;~~
- (12) ~~The occupation shall not consist of the following uses: industrial, utility, manufacturing, repairing, maintaining, fabrication, laboratory, or other similar uses;~~
- (13) ~~No signs advertising the business shall be permitted on the premises;~~
- (14) ~~No occupation use shall be allowed which creates any hazardous risk or condition on the premises or to surrounding neighbors or their property, or any other health or safety hazard, whether regulated by statute or rule promulgated by any administrative body of the state, by the federal government, by the city, or which would constitute a common law nuisance;~~
- (15) ~~The occupation shall not be detrimental or injurious to adjoining property or resident by the creation of dust, electrical interference, fumes, gas, glare, heat, light, noise, vibration, waste runoff, or other objectionable or obnoxious conditions;~~
- (16) ~~Nothing herein shall be construed to allow animal breeding, animal hospitals, pet grooming, commercial kennels, commercial stables, veterinary offices, clinics, hospitals, barbershops, beauty parlors, contractor's yards, dancing schools/studios, junkyards, lodging houses, "bed and breakfast" lodges, massage parlors/therapy clinics, restaurants, cocktail lounges, rental outlets, adult-oriented businesses or vehicle repair shops as home occupations.~~
- (17) ~~A home occupations shall effectively be undetectable by the permittee's neighbors and the public.~~
- (18) ~~No occupation shall have customers driving or commuting to the home.~~

~~(19) No occupation use shall have regularly scheduled delivery of goods or services to the home. The occurrence of any incidental delivery of goods or services to the home shall not exceed what may be expected of a typical residence.~~

(1) The occupation shall not:

(A) Change the residential character of the lot and dwelling;

(B) Alter the exterior appearance of the building(s) from that of a dwelling for human habitation, or alter the appearance of accessory structures so as to be architecturally inconsistent with the main building; or

(C) Require the installation of machinery or equipment other than the type and quantity of machinery or equipment customarily found in a home associated with a hobby, avocation, or home office.

(2) Such use shall be incidental and secondary to the use of the premises for residential purposes.

(3) Participation in a home occupation is limited to occupants of the dwelling unit.

(4) The occupation shall not offer a ready inventory of goods or commodities for sale on the premises unless the goods or commodities are made or assembled on-site.

(5) There shall be no outside storage or display related to the home occupation visible from a public right-of-way or adjoining residence unless the storage or display is of a type typically visible in a residential area.

(6) The occupation shall not consist of the following uses, or other similar uses, as defined or used in the following sections of this Code:

(A) Industrial (Section 30.03.010, District C-2 (Governmental/Light Industrial));

(B) Utility (Section 30.03.015, District GUI (Governmental, Utility and Infrastructure));

(C) Manufacturing (Section 30.03.010, District C-2 (Governmental/Light Industrial));

(D) Repairing (Sections 30.03.013, District M (Marina), 30.03.014, District AG (Agricultural), and 30.03.016, District AV (Aviation));

(E) Maintaining (Sections 30.03.010, District C-2 (Governmental/Light Industrial), 30.03.011.5, District C-4 (Automotive Sales and Service), 30.03.014, District AG (Agricultural), and 30.03.016, District AV (Aviation));  
or

(F) Laboratory (Sections 30.03.009, District C-1 (Office/Retail), and 30.03.010, District C-2 (Governmental/Light Industrial)).

(7) No signs advertising the home occupation shall be permitted on the premises, including vehicles parked on the premises.

(8) No occupation use shall be allowed which creates any hazardous risk or condition on the premises or to surrounding neighbors or their property, or any other health or safety hazard, including but not limited to release of industrial or hazardous materials into the stormwater or wastewater systems, whether regulated by statute or rule promulgated by any administrative body of the state, by the federal government, by the city, or which would constitute a common law nuisance.

(9) The occupation shall not be detrimental or injurious to adjoining property or residents, or create a disturbance to said adjoining residents, by the creation of dust, electrical interference, fumes, gas, glare, heat, light, noise, vibration, waste runoff, or other reasonably objectionable or obnoxious conditions.

(10) Nothing herein shall be construed to allow animal breeding, animal hospitals, pet grooming, commercial kennels, commercial stables, veterinary offices, clinics, hospitals, barbershops, beauty parlors, contractor's yards, dancing schools/studios, junkyards, lodging houses, "bed and breakfast" lodges, massage parlors/therapy clinics, restaurants, cocktail lounges, rental outlets, adult oriented businesses or vehicle repair shops as home occupations.

**Sec. 30.05.004.6 Criteria specifically applicable to home occupation permits for home daycare operations.**

(a) A proposed home daycare operation must comply with all of the general criteria for home occupation permits enumerated in Sections 30.05.002, 30.05.003, and 30.05.004 of this Code of Ordinances, as well as the following specific criteria.

(b) A home day care operation that operates as a "Listed" or "Registered" facility as defined in statute or Texas Health and Human Services Commission regulations may be approved (possibly with additional restrictions or limitations) taking into account factors including but not limited to the operator's proposed business model, the size of the home, the size of the lot, the size of the space available in the yard for outside activities of the children under care, distance to neighboring homes, and parking availability. The City Council may grant a home occupation permit for a "Listed" or "Registered" home day care operation after a recommendation on the proposed permit from the zoning and planning commission, and following public notice and hearings as required by Section 30.05.002(d) of this Ordinance.

(c) A home day care operation that operates as a "Licensed" facility as defined in statute or Texas Health and Human Services Commission regulations shall not be approved in a residential zoning district.

(d) Section 30.05.004(3) applies ~~does not apply~~ to home daycare operations unless provided otherwise for in the special use permit.

(e) Parking for all home daycare operations, including the operator, other residents of the home, customers, visitors, and helpers or contractors shall be limited to the right-of-way bordering the home daycare operation, where permitted, and to the garage and driveway on the

property of the home daycare operation. Such parking shall not encroach upon or obstruct ingress and egress to neighboring properties.

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## **Sec. 22.02.001. Definitions**

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*Nuisance.* Any offensive or unpleasant thing which annoys or disturbs a person of ordinary sensibility in the free use, possession, or enjoyment of his property or which endangers one's health or life or property, such as but not limited to: noise, dust, smoke, fumes, odors, glare, flashes, heat, electronic or atomic radiation, effluent (inadequately treated sewer or septic tank surface outflow, vibration, shock waves, gases, unlawful diversion of drainage onto adjacent property, unshielded yard or building lighting, electrical or magnetic interference. Any offensive or unpleasant condition which substantially interferes with the use and enjoyment of one's property or which endangers one's health or life or property by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities attempting to use and enjoy their property."

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### **3. SAVINGS**

The repeal of any ordinance or part of ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the City under any section or provisions of any ordinances at the time of passage of this Ordinance."

### **4. SEVERABILITY**

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this Ordinance.

### **5. REPEALER**

All Ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

### **6. EFFECTIVE DATE**

This Ordinance shall be effective immediately upon passage and publication as provided for by law.


### **7. PROPER NOTICE & MEETING**

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said

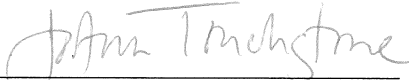
meeting was given as required by the Open Meetings Act, Texas Government Code, and Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

**PASSED & APPROVED this, the 1<sup>st</sup> day of August 2022, by the City Council of Lakeway, Texas.**

**CITY OF LAKEWAY:**

By:   
Thomas Kilgore, Mayor

**ATTEST:**

  
Jo Ann Touchstone, City Secretary

