

City of Windcrest



AGENDA

**PLANNING AND ZONING COMMISSION MEETING
MARCH 24, 2021**

CITY COUNCIL CHAMBERS @ 8601 MIDCROWN
6:00 P.M.

NOTICE IS HEREBY GIVEN THAT A CITY OF WINDCREST PLANNING AND ZONING COMMISSION MEETING WILL BE HELD AT WINDCREST CITY HALL, 8601 MIDCROWN, WINDCREST, TEXAS ON THE 24th DAY OF MARCH 2021, STARTING AT 6:00 P.M. DURING THE MEETING THE FOLLOWING SUBJECTS WILL BE CONSIDERED AND THE COMMISSION MAY TAKE ACTION ON ANY OF THE LISTED SUBJECTS.

THE PLANNING AND ZONING COMMISSION RESERVES THE OPTION TO RECESS THE MEETING DURING THE EVENING OF MARCH 25, 2021, AND TO RECONVENE THE MEETING ON THE FOLLOWING MARCH 24, 2021, AT 9:00 A.M. AT THE WINDCREST CITY HALL, 8601 MIDCROWN, WINDCREST, TEXAS.

NOTICE OF ASSISTANCE AT THE PUBLIC MEETING

The City of Windcrest Council Chambers is wheelchair accessible, and accessible parking spaces are available. In compliance with Americans with Disabilities Act, the City of Windcrest will provide reasonable accommodations for persons attending the meeting. To better serve you, requests should be received 48 hours prior to the meeting. Please contact the City Secretary's Office, at 210-655-0022 ext. 2150 or Fax 210-655-8776, or 711 Texas Relay.

- I. Call to Order**
- II. Roll Call**
- III. Vote to Excuse Absent Commission Members**
- IV. Pledge of Allegiance**
- V. Ceremonial**
 - a) Swearing in of newly appointed commission members for unexpired terms ending March 1, 2023.
- VI. Citizens to be Heard**
 - a) Citizens may address the Commission on topics not on the agenda for no more than three (3) minutes.
 - b) Citizens shall also have the opportunity to address the Commission during consideration of posted agenda items for no more than six (6) minutes.
 - c) A maximum of six (6) members of the public will be permitted in the City Council Chambers at a time. All attendees will be required to be screened for present signs of COVID-19 prior to entering City Hall.
 - d) Four (4) hours prior to the meeting, an email to the city secretary at citysecretary@windcrest-tx.gov is required to be added to the attendee list ensuring proper physical distance seating inside and outside City Council Chambers.
 - e) An email statement may be sent to the City Secretary @ citysecretary@windcrest-tx.gov

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to be read into the meeting to Commission. Statements will be provided to Commission and available to the public not in attendance after the meeting.

- f) A City Official may make a statement of specific factual information in response to an inquiry made by a member of the public, or a recitation of existing policy in response to an inquiry made by a member of the public.

VII. Items for Discussion/Action

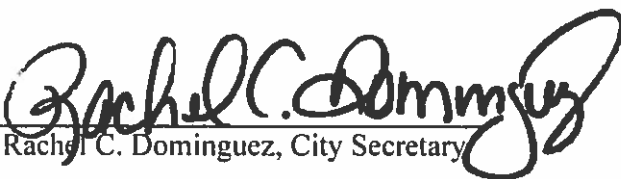
- a) The Commission will review, discuss, and may take action on a recommendation to the City Council on an amendment to Chapter 18, Article II, Section 18-21 – Home Occupation.
- b) The Commission will review, discuss, and may take action on setting a date for a public hearing to receive feedback from the community on a proposed change to the Windcrest Code of Ordinances Chapter 18, Article II, Section 18-21 – Home Occupation.

VIII. General Announcements & Future Agenda Items Requested

Per Ordinance No. 618, repealing Ordinance No. 593; Section 9: Every agenda shall include an item entry granting a member the opportunity to propose an item for consideration of future agendas for Regular or Special Meetings. Any member may request the inclusion of such items at any meeting.

IX. Adjournment

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the Planning and Zoning Commission of the City of Windcrest is a true and correct copy of said Notice and was posted on the bulletin board at City Hall of said City in a convenient place to the public and said Notice was posted more than seventy-two (72) hours prior to the meeting March 24, 2021.

By: 
Rachel C. Dominguez, City Secretary

AGENDA NOTICES:**DECORUM REQUIRED:**

Any disruptive behavior, including shouting or derogatory statements or comments may be ruled out of order by the Presiding Officer. Continuation of this type of behavior could result in a request by the Presiding Officer that the individual leave the meeting, and if refused, an order of removal.

ACTION BY COUNCIL AUTHORIZED:

The City Council may vote and/or act upon any item within this Agenda. The Planning and Zoning Commission reserves the right to retire into executive session concerning any of the items listed on this Agenda, pursuant to and in accordance with Texas Government Code § 551.072 (Deliberations about Real Property); § 551.073 (Deliberations about Gifts & Donations); § 551.076 (Deliberations about Security Devices); §551.087 (Economic Development); and, § 551.071 to seek the advice of its attorney about pending or contemplated litigation, settlement offer or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflict with the Open Meetings Act and may invoke this right where the City Attorney, the Mayor or a majority of the Governing Body deems an executive session is necessary to allow privileged consultation between the City Attorney and the governing body, if considered necessary and legally justified under the Open Meetings Act. The attorney may appear in person, or appear in executive session by conference call in accordance with applicable state law.

EXECUTIVE SESSIONS APPROVED BY CITY ATTORNEY:

This agenda has been reviewed and approved by the City's legal counsel and the presence of any subject in any Executive Session portion of the agenda constitutes a written interpretation of Texas Government Code Chapter 551 by legal counsel for the body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the meeting considering available opinions of a court of record and opinions of the Texas Attorney General known to the attorney. This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.144(c) and the meeting is conducted by all participants in reliance on this opinion.

ATTENDANCE BY OTHER ELECTED OR APPOINTED OFFICIALS:

It is anticipated that members of the City Council, or other city board, commissions and/or committees may attend the meeting in numbers that may constitute a quorum of the other city boards, commissions and/or committees. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a meeting of the other boards, commissions and/or committees of the City, whose members may be in attendance. The members of the boards, commissions and/or committees may participate in discussions on the same items listed on the agenda, which occur at the meeting, but no action will be taken by such in attendance unless such item and action is specifically provided for on an agenda for that board, commission or committee subject to the Texas Open Meetings Act.

ORDINANCE NO. 2021-____(O)

**AN ORDINANCE PERMITTING CERTAIN TYPES OF HOME
OCCUPATIONS WHILE MITIGATING NEGATIVE EFFECTS
OF BURDENS TO THE COMMUNITY BY AMENDING
CHAPTER 18, ARTICLE II, SECTION 18-21 HOME
OCCUPATION AND SECTIONS 113-110 AND 113-5 AND
ADOPTING ARTICLE VIII OF THE ZONING CODE OF THE
WINDCREST CODE OF ORDINANCES**

WHEREAS, the City of Windcrest is a home-rule municipality located within Bexar County, Texas; and

WHEREAS, the evaluation of permitted home occupations in the Windcrest Code of Ordinances was last updated in 2001; and

WHEREAS, changes in technology and work from home opportunities have become more accessible and common in workforce practices; and

WHEREAS, the City desires to make home occupations more available to its residents while also maintaining peaceful and enriching neighborhoods¹; and

WHEREAS, the Windcrest Planning and Zoning Commission and City Council in compliance with the laws of the State of Texas and the City's municipal code, have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all persons interested and the in the exercise of its legislative discretion, has determined it is appropriate, for good government and for the welfare and benefit of the public to amend the Code and allow for home occupations which do not have negative external effects on the surrounding community.

I.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that Article II, Section 18-21-Home Occupation of Chapter 18 of the Windcrest Code of Ordinances shall be amended with strike through text being deletions and underlined text being additions and shall read as follows:

Article II. – Business Regulations

¹ Official Comment: Official comments holds the same status as a legislative determination within the Whereas clauses and is for context, intent, and reference. However, such comments are not part of the Code of Ordinances. The Council acknowledged many people are working from home and their work is completely contained within one room or area as they work virtually through the computer. Some business/commercial work may include travel by the property owner/occupier, but no negative external effects of such business/commercial use is felt by the adjoining property owners. Especially in light of the recent COVID-19 pandemic, the Council instructed the City Attorney to make recommendations for an expanded definition, with a heavier focus on simply reducing or eliminating external effects on neighboring property owners and less on specifically defining existing occupations.

Sec. 18-21.-Home Occupations

~~A service related occupation or profession engaged in by the occupants of a dwelling, limited to any of the following: accounting, architecture, dentistry, interior design, lawyer, physician, musician, artist, seamstress or computer services. The proprietor of a home occupation may not have any employees or assistants, install any signage, create any trash or refuse beyond the average amount normally generated by residences in the neighborhood, create any odor, dust, smoke, vibration, noise, heat, glare or electromagnetic interference which can be detected at, or beyond, the property line, store equipment, material or stock outdoors, store explosives or highly flammable or hazardous materials on the premises, nor permit off-site parking of customers, clients or commercial vehicles.~~

Home Occupations are allowed only as permitted under Article VIII, Section 113-380.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that Article III, Division II, Section 113-110 Use Regulations of Chapter 113 of the Windcrest Code of Ordinances shall be amended with strike through text being deletions and underlined text being additions and shall read as follows:

Sec. 113-110. - Use regulations.

The following regulations shall apply to the "R-1" One-Family Dwelling District:

A building or premises shall be used only for the following purposes:

- (1)Single-family dwellings.
- (2)Church (except temporary revival), to include normal functions such as schools, child care and bazaars.
- (3)School, public or private, having a curriculum equal to a public elementary, high school, or institution of higher learning.
- (4)Public parks, playgrounds, swimming pools (public or private), golf courses (except miniature golf) and golf clubs (public or private and related golf pro shops, residential tennis courts, tennis courts and clubs (public or private) and related tennis pro shops, arts and crafts shops and/or facilities (public or private), public recreation and community buildings.
- (5)Municipal buildings, non-profit libraries or museums, police and fire stations.
- (6)~~Customary~~ Authorized home occupations which are permitted as set forth in ~~Subchapter 23.500-22 of this chapter~~ Article VIII of this chapter.
- (7)Country clubs.
- (8)Water tanks and towers.
- (9) Accessory buildings and accessory uses, customarily incident to the above uses when located on the same lot, including a private garage for one or more cars, and/or bona fide servant's quarters not for rent or used for commercial purposes.

(10) Signs authorized in accordance with chapter 109 of the Code.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that Article I In General, Section 113-5 Definitions, of Chapter 113 of the Windcrest Code of Ordinances shall be amended with strike through text being deletions and underlined text being additions and shall read as follows:

Sec. 113-5. – Definitions.

...

Home occupation means any business, profession, trade or occupation conducted within a dwelling or an accessory structure as defined and limited in ~~this Article VIII of this Chapter. in chapter 18,~~ licenses, permits and business regulations, section 15-21 of the Code of Ordinances.

...

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that Article VIII, Home Occupations, be created under the Zoning Chapter of the Windcrest Code of Ordinances shall be amended as follows to add Section 113-381 thru Section 113-388:

Sec. 113-381. – Definitions

(1) In addition to the definitions contained within chapter 113 of this Code, the following definitions apply to this section:

- a. *Home Occupation* means a profession, occupation, business, commercial or institutional use or a use of a non-residential and non-volunteer nature being operated, or engaged in, or performed by any person upon property which is zoned R-1, R-2, or is located in a zone that permits uses identified in the R-1 and R-2 Districts.
- b. *Permitted Home Occupation* means a home occupation which has met all the requirements of this section, including obtaining a business permit.²
- c. *Self-Contained Home Business* means a home occupation carried on within a dwelling unit or an accessory structure in a residential zone where the home business use is secondary to the residential use, is performed entirely within the structure of the dwelling unit or accessory building, and does not cause negative impacts to the adjoining property owners. Such business use must not change the

² Official Comment: There is a slight legal difference between a definition and a permitting/prohibition of the term as it is defined. As a result, while some use may qualify under the definition of a home occupation, it must still obtain the permit with the permit criteria. This allows the City to better regulate and adjust to circumstances as they arise regarding home occupations.

character of the dwelling or the accessory building or change the residential character of the neighborhood.³

- d. Telecommuting or Remote Employment means an employment arrangement in which employees do not commute or travel to a central place of work, but instead work remotely and in a structure zoned residential. The definition does not include being self-employed and requires an employee/employer relationship with the owner or occupier of the property where the use occurs.⁴
- e. Telecommuting or Remote Employment use means a commercial, business, institutional, or occupational use where the employer headquarters is located in a separate location from the residential property and an individual on the residential property is required to perform their job duties on the residential property.⁵
- f. Hobby Businesses. Any commercial, business, institutional, or occupational use which is not a source of primary income and does not exceed \$10,000.00 in gross income annually.

Sec. 113-382. – Prohibition

Home occupations are prohibited uses in residential zones unless authorized by this Code.

Sec. 113-383. – Permit Required.

In order to qualify as an authorized home occupation, the owner of the property or someone with control and a right of possession over the property must obtain a business permit from the City and meet all other qualifications of this section, unless expressly excluded. Obtaining a business permit is a prerequisite to meet the definition of a permitted home occupation. No special use permits may be granted for a home occupation.⁶

Sec. 113-384. - Permitted Home Occupations in Residential Zones.

- (1) The only home occupation uses authorized are those listed below, and which meet all criteria identified in Sec.113-385:

- a. Attorney;

³ Official Comment: This definition is intended to be a catchall for home occupations that the City would consider permitting that are contained entirely within the structures on the property and have little to no negative external effects on neighbors. This definition is flexible, so that it adjusts based on changes in technology and does not require the City to constantly update the laundry list of permitted home occupations, which are ever changing. This definition requires that the occupational use be performed by the person or persons who live on that property and does not allow houses to be used only for a home occupation with no one living at the location.

⁴ In response to the COVID-19 pandemic, many employers are permitting or requiring their employees to work from home. For additional clarity and to prevent confusion, this definition was included to expressly exempt such use from the permits required under this ordinance as such use does not constitute a business in and of itself.

⁵ To create a workable exception for telecommuting or remote employment, the specific use defining what constitutes telecommuting or remote employment under the City's zoning code is required to clarify the exact use that is entitled to the exception listed in Sec. 113-386.

⁶ Because the zoning code expressly states special use permits cannot be issued in a residential zone pursuant to §113.321, and because home occupations are limited to residential zones, no special use permits can be issued for home occupations.

- b. Accountant;
- c. Realtor/broker/insurance agent;
- d. Architecture;
- e. Computer Services;
- f. Self-Contained Home Business;
- g. Telecommuting or Remote Employment;
- h. Hobby Businesses;
- i. Home use authorized by state law as a matter of right.⁷

Sec. 113-385. - Criteria.

- (1) Permits for authorized home occupation uses identified in Sec. 113-384, may be issued by the designated city official only if they meet the following criteria.⁸ These criteria must be maintained during the term of the use and the permit may be revoked if the permit holder violates any of the following criteria:
- a. Permitted home occupations may have only one (1) employee or assistant that works or regularly travels to or from the property, unless the employee(s) or assistant(s) also use the dwelling as their primary residency.
 - b. Permitted home occupations may not install any signage.⁹
 - c. Permitted home occupations may not create any trash or refuse beyond the average amount normally generated by residences in the neighborhood.
 - d. Permitted home occupations may not create any odor, dust, smoke, vibration, noise, heat, glare, or electromagnetic interference which can be detected at, or beyond, the property line.
 - e. Permitted home occupations may not store equipment, material, or stock outdoors, nor store explosives or highly flammable or hazardous materials on the premises.
 - f. Permitted home occupations use shall be incidental and subordinate to the use as a residence. There shall be no external evidence of the home occupation. No activity shall indicate, from the exterior of the structure, that the premises are being used for anything other than a dwelling unit.
 - g. Permitted home occupations shall not use alleys as a primary access point or any other purpose associated with a permitted home occupation.
 - h. The appearance of the dwelling or accessory building in no way shall be altered, nor shall the occupation be conducted in a manner which would cause the residence to differ from its original residential character, either by the use of colors, materials, construction, lighting, or signs.
 - i. The dwelling or accessory building must be maintained in conformity with the City's structural, international, and health and safety codes.

⁷ An example of this would be a community home with six or fewer care givers, which the City is precluded from regulating in residential zones under state law.

⁸ The reason for the length of this list of criteria is because the Council wants to move away from the laundry-list of allowed uses which is changing and focus more on prohibiting those occupations which have negative external effects on neighbors. As a result, this is intended to encompass the list of negative external affects but is broad enough to adjust to changes in the types of occupations which may be created in the future.

⁹ This prohibition already exists within the code.

- j. There shall be no outside display or storage of goods or materials visible from the public right-of-way.
- k. The use of a garage for the purpose of a home occupation shall not decrease the amount of off-street parking required for the residence.
- l. No more than twenty-five percent (25%) of the gross area of the property shall be used for the permitted home occupation including the storage or warehousing of inventory or fabrication materials used in the permitted home occupation.
- m. Delivery vehicles shall be limited to those types of vehicles which typically make deliveries to single-family neighborhoods, such as the United States Postal Service, United Parcel Service, pickup trucks, and light vans.
- n. There shall be no repair of large appliances, internal combustion engines, automobiles or motorcycles under the permit.
- o. Not more than one (1) commercial vehicle shall be used in conjunction with the home occupancy use or be permitted on the premises, the maximum size thereof not exceeding one (1) ton.
- p. There shall be no storage of heavy equipment or machinery specially designed for executing construction involving earthwork operations or other large construction tasks. There shall also be no storage of construction materials that are intended to be used offsite.
- q. Permitted home occupations shall not include cooking or food preparation at the site for the purpose of retail sales from a vehicle or a structure.
- r. Authorized business permits apply to a specific property and owner or occupier and shall not be transferable to different persons or to different locations.
- s. The permit holder shall not conduct the home occupation in such a manner as to increase the amount of traffic on the property's adjoining roadway beyond the average amount normally generated by residences in the neighborhood, nor shall the occupant cause, permit, or cause to be permitted, off-site parking of customers, clients, or commercial vehicles.
- t. A home occupation shall not be conducted in a way that is perceptible in external negative effects (such as but not limited to noise, odors, traffic) from beyond the lot line.
- u. A home occupation shall not be conducted in a way or in a manner which causes a threat to the health and safety of citizens or consumers.
- v. The permit holder shall not cause, permit, or cause to be permitted, in connection with their occupation or profession, deliveries of packages, outgoing or incoming, that result in an above-average number of packages being present on the property.
- w. The permit holder shall comply with all applicable federal, state, and local laws pertaining to the specific use involved.
- x. The commercial sale of firearms, explosives, ammunition, or the manufacturing thereof for commercial sale is not a permitted home occupation under this article. This provision shall not be construed as prohibiting the hand loading or reloading of ammunition for private use and not for sale.
- y. Only one (1) home occupation use permit shall be allowed per property.

Sec. 113-386 - Exceptions from Permit.

Telecommuting, remote employment, or hobby businesses as defined in Sec. 113-381 shall not require a permit but shall comply and maintain all criteria identified in Sec. 113-385 in order to qualify as an authorized home occupation.

Sec. 113-387. - Appeals.

In the event the applicant's permit is denied, the applicant may appeal in writing, on an approved form, to the City Manager's office within ten (10) calendar days. In the event the City Manager agrees with the denial, the applicant may appeal, in writing, to the Board of Adjustment. The Board of Adjustment has no authority to grant a variance or special exception but may consider whether the permit denial was improper under the terms of this section.

Sec. 113-388. - Revocation.

In the event a permit holder fails to meet the continuing criteria for holding a valid permit, the designated City official may revoke the permit, after providing the permit holder written notice and a minimum of ten (10) days to cure the non-compliance. In the event the permit is revoked, the permit holder may appeal in writing, on an approved form, to the City Manager's office within ten (10) calendar days from the date of the revocation. The City Manager's determination is final.

II. CUMULATIVE CLAUSE

That this Ordinance shall be cumulative of all provisions of the City of Windcrest Code of Ordinances except where the provisions of this Ordinance are in direct conflict with the provisions of such existing Ordinance, in which event the conflicting provisions of such existing Ordinance are hereby repealed and this Ordinance controls.

III. SEVERABILITY

That it is hereby declared to be the intent of the City Council for the City of Windcrest that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance should be declared unconstitutional by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of the Ordinances, since the same would have been enacted by the City Council without incorporation in this ordinance of any such unconstitutional phrases, sentences, paragraphs, or sections.

IV. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was adopted 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, Chapter 551 of the Texas Government Code.

**V.
EFFECTIVE DATE**

This ordinance shall be effective upon passage and publication as required by state and local law.

**VI.
READINGS**

DULY PASSED ON FIRST READING, on the _____ day of _____, 20__ at a regular meeting of the City Council of the City of Windcrest, Texas, which was held in compliance with the Open Meetings Act, Gov't. Code §551.001, et. Seq. at which meeting a quorum was present and voting.

DULY PASSED AND APPROVED, on the _____ day of _____, 20__ at a regular meeting of the City Council of the City of Windcrest, Texas, which was held in compliance with the Open Meetings Act, Gov't. Code §551.001, et. Seq. at which meeting a quorum was present and voting.

CITY OF WINDCREST, TEXAS

Dan Reese, Mayor

ATTEST:

Rachel Dominguez, City Secretary

APPROVED:

Ryan Henry, City Attorney