



Southwest Ranches Town Council

REGULAR MEETING
Agenda of October 11, 2018

Southwest Ranches Council Chambers
7:00 AM Thursday

13400 Griffin Road
Southwest Ranches, FL 33330

<u>Mayor</u> Doug McKay	<u>Town Council</u> Steve Breitkreuz Gary Jablonski	<u>Town Administrator</u> Andrew D. Berns	<u>Town Attorney</u> Keith M. Poliakoff, J.D.
<u>Vice Mayor</u> Freddy Fisikelli	Denise Schroeder	<u>Town Financial Administrator</u> Martin Sherwood, CPA CGFO	<u>Assistant Town Administrator/Town Clerk</u> Russell C. Muniz, MMC

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation, a sign language interpreter or hearing impaired to participate in this proceeding should contact the Town Clerk at (954) 434-0008 for assistance no later than four days prior to the meeting.

1. Call to Order/Roll Call

2. Pledge of Allegiance

3. Public Comment

- All Speakers are limited to 3 minutes.
- Public Comment will last for 30 minutes.
- All comments must be on non-agenda items.
- All Speakers must fill out a request card prior to speaking.
- All Speakers must state first name, last name, and mailing address.
- Speakers will be called in the order the request cards were received.
- Request cards will only be received until the first five minutes of public comment have concluded.

4. Board Reports

5. Council Member Comments

6. Legal Comments

7. Administration Comments

Ordinance - 1st Reading

- 8. AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA PERTAINING TO THE REGULATION OF NEW COMMERCIAL PLANT NURSERIES AS A SPECIAL EXCEPTION USE; AMENDING THE TOWN OF SOUTHWEST RANCHES UNIFIED LAND DEVELOPMENT CODE ("ULDC") BY AMENDING SECTION 10-30, "TERMS DEFINED;" AMENDING ARTICLE 45, "AGRICULTURAL AND RURAL DISTRICTS;" SECTIONS 045-030, "GENERAL PROVISIONS" AND 045-050, "PERMITTED AND PROHIBITED USES;" AMENDING ARTICLE 60, "COMMUNITY FACILITY DISTRICT," SECTION 060-030, "PERMITTED AND PROHIBITED USES;" AMENDING ARTICLE 100, "APPLICATION SUBMITTAL AND NOTICE PROCEDURES," SECTIONS 100-020, "GENERAL APPLICATION REQUIREMENTS,"**

100-030, "MINIMUM REQUIRED CONTENT FOR ALL PUBLIC HEARING NOTIFICATIONS," AND 100-060, "MAIL NOTICE REQUIREMENTS FOR PUBLIC HEARINGS;" CREATING ARTICLE 112, "SPECIAL EXCEPTION USES;" PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND, PROVIDING FOR AN EFFECTIVE DATE. {Second Reading to be held October 25, 2018}

9. Adjournment

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.



Town of Southwest Ranches
13400 Griffin Road
Southwest Ranches, FL 33330-2628

(954) 434-0008 Town Hall
(954) 434-1490 Fax

Town Council
Doug McKay, Mayor
Freddy Fisikelli, Vice Mayor
Steve Breitkreuz, Council Member
Gary Jablonski, Council Member
Denise Schroeder, Council Member

Andrew D. Berns, Town Administrator
Keith M. Poliakoff, JD, Town Attorney
Russell Muniz, Assistant Town Administrator/Town Clerk
Martin D. Sherwood, CPA, CGMA, CGFO, Town Financial Administrator

COUNCIL MEMORANDUM

TO: Honorable Mayor McKay and Town Council
VIA: Andrew D. Berns, Town Administrator
FROM: Keith Poliakoff
DATE: 9/27/2018
SUBJECT: Nursery Ordinance

Recommendation

Town Council consideration for a motion to approve this ordinance on first reading.

Strategic Priorities

- A. Sound Governance
- E. Cultivate a Vibrant Community

Background

Town property owners using their property for bona fide agricultural uses may seek to diversify their farm income through the production and retail sale of cottage foods on their property. The Town recognizes the need to provide a definition for cottage foods and to modify Section 045-050 of the zoning code to allow for the retail sale of cottage foods produced from farm products grown on the property as an accessory use provided that the property owner obtains a certificate of use for the retail sale of cottage foods.

The Town also recognizes the community's need for construction trade businesses that provide services to the public for the installation, removal and maintenance of nursery stock. The Town Council finds it necessary to establish a definition for commercial landscape maintenance operations and to establish regulations to ensure that such use is located and operated in a manner that is compatible with the surrounding neighborhood and avoids the creation of a nuisance.

Plant nurseries may seek to diversify their existing bona fide agricultural operations on their

property by adding land uses not recognized or protected as bona fide agriculture such as retail sales and commercial landscape maintenance operations. Existing plant nurseries that wish to use a portion of their property for retail sales or commercial landscape maintenance operations should be afforded an opportunity to use their property for these accessory uses, provided that the zoning district allows for these accessory uses, and that the property owner obtains a certificate of use and a special use exception permit for such use.

A property owner who wishes to use all of the property for commercial landscape maintenance operations may do so, provided that the zoning district allows for this conditional use and that the property owner has obtained a certificate of use by January 1, 2019 and a special use exception permit by January 1, 2020.

The Town Council finds it necessary to establish that any person engaged in plant nursery retail sales or a commercial landscape maintenance operation on the effective date of this Ordinance is using their property for a nonconforming use that will be deemed unlawful after January 1, 2022. A property owner who wishes to continue using the property for plant nursery retail sales or commercial landscape maintenance operations must obtain a certificate of use pursuant to Section 005-120 by December 31, 2018, and must obtain a Special Use Exception Permit by December 31, 2021 or discontinue the unlawful use by January 1, 2019.

The proposed Ordinance is consistent with the adopted comprehensive plan.

Fiscal Impact/Analysis

N/A

Staff Contact:

Keith Poliakoff, Town Attorney

ATTACHMENTS:

Description	Upload Date	Type
Nursery Ordinance - TA Approved	10/4/2018	Ordinance

1 provided that the property owner obtains a certificate of use for the retail sale of
2 cottage foods; and

3 **WHEREAS**, the Town recognizes the community’s need for construction trade
4 businesses that provide services to the public for the installation, removal and
5 maintenance of nursery stock; and

6 **WHEREAS**, the Town Council finds it necessary to establish a definition for
7 commercial landscape maintenance operations and to establish regulations to ensure
8 that such use is located and operated in a manner that is compatible with the
9 surrounding neighborhood and avoids the creation of a nuisance; and

10 **WHEREAS**, plant nurseries may seek to diversify their existing bona fide
11 agricultural operations on their property by adding land uses not recognized or
12 protected as bona fide agriculture such as retail sales and commercial landscape
13 maintenance operations; and

14 **WHEREAS**, existing plant nurseries that wish to use a portion of their property
15 for retail sales or commercial landscape maintenance operations should be afforded an
16 opportunity to use their property for these accessory uses, provided that the zoning
17 district allows for these accessory uses, and that the property owner obtains a
18 certificate of use and a special use exception permit for such use; and

19 **WHEREAS**, a property owner who wishes to use all of the property for
20 commercial landscape maintenance operations may do so, provided that the zoning
21 district allows for this conditional use and that the property owner has obtained a
22 certificate of use by March 1, 2019 and a special use exception permit by December 31,
23 2021.

24 **WHEREAS**, the Town Council finds it necessary to establish that any person
25 engaged in plant nursery retail sales or a commercial landscape maintenance operation

1 on the effective date of this Ordinance is using their property for a nonconforming use
2 that will be deemed unlawful after December 31, 2021. A property owner who wishes
3 to continue using the property for plant nursery retail sales or commercial landscape
4 maintenance operations must obtain a certificate of use pursuant to Section 005-120 by
5 March 1, 2019, and must obtain a Special Use Exception Permit by December 31, 2021
6 or discontinue the unlawful use by January 1, 2022; and

7 **WHEREAS**, the Town Council, sitting as the Local Planning Agency, has
8 reviewed the contents of this Ordinance at a duly noticed public hearing on _____ and
9 has issued its recommendation to the Town Council, finding that the Ordinance is
10 consistent with the adopted comprehensive plan.

11 **NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE**
12 **TOWN OF SOUTHWEST RANCHES, FLORIDA:**

13 **Section 1.** The foregoing "WHEREAS" clauses are hereby ratified and confirmed
14 as being true and correct, and are hereby incorporated herein and made a part hereof.

15 **Section 2.** Section 10-30, "Terms Defined" is hereby amended as
16 follows:

17 * * * *Commercial Landscape Maintenance Operation.* The term "commercial
18 landscape maintenance operation" means a person engaged in the installation,
19 removal and maintenance of plants and plant products on other properties.

20 *Cottage foods.* The term "cottage foods" means the preparation of farm
21 products in an unlicensed kitchen that are sold directly to consumers without a
22 permit from the Florida Department of Agriculture and Consumer Services and in
23 compliance with Chapter 500.80, Florida Statutes. The term does not include
24 products sold wholesale.

25 *Farm product.* The term "farm product" means any plant or animal useful
26 to humans and includes, but is not limited to, any product derived therefrom.

27 *Landscape materials.* The term "landscape materials" means items sold by a
28 plant nursery at that are accessory to plants and plant products, including
29 stepping stones, river rocks, cap rocks, tree-bracing kits, mulch, top soil, and

Ordinance No. 2018-____

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1 fertilizer. The term does not include lawn furniture, picnic tables, rocking chairs,
2 outdoor fire pits, grilles, monuments, decorative fountains, hot tubs, Jacuzzis,
3 rugs, statues, gazebos and playground equipment.

4 *Plant nursery.* The term "plant nursery" means a person that has a valid
5 certification of registration from the Florida Department of Agriculture and
6 Consumer Services for the sale and distribution of any nursery stock.

7
8 *Plants and plant products.* The term "plants and plant products" means
9 trees, shrubs, vines, forage and cereal plants, and all other plants and plant
10 parts, including cuttings, grafts, scions, buds, fruit, vegetables, roots, bulbs,
11 seeds, wood, lumber, and all products made from them.

12
13 *Nursery.* The term "nursery" means any grounds or premises on or in which
14 nursery stock is grown, propagated, or held for sale or distribution, except where
15 aquatic plant species are tended for harvest in the natural environment.

16
17 *Nursery stock.* The term "nursery stock" means all plants, trees, shrubs,
18 vines, bulbs, cuttings, grafts, scions, or buds grown or kept for or capable of
19 propagation or distribution.

20
21 *Plant nursery retail sales.* The term "plant nursery retail sales" means a
22 plant nursery that sells plants and plant products or landscape materials directly
23 to the public at a specific location with established hours of operation. The term
24 does not include the sale of plants grown on the property for wholesale to a
25 broker or other person for resale.

26 * * *

27 *Special exception use.* The term, "special exception use" means a use with
28 one or more characteristics that may be incompatible with the permitted uses
29 and intended character of a particular zoning district, and which therefore
30 requires special review and consideration to ensure that each instance of the
31 proposed use is appropriately sited, designed and operated within the zoning
32 district.

33
34 *Special exception use permit.* The term "special exception use permit" means
35 a resolution of the Town Council authorizing a special exception use on a specific
36 property, including terms and conditions of such authorization.

37 * * *
38

1 **Section 3.** Article 45, "Agricultural and Rural Districts," Section 045-030,
2 "General Provisions" is hereby amended as follows:

3 * * *

4 (J) Sale of farm products and incidental plant nursery products.

5 (1) Farm products grown, raised or cultivated may be sold on the
6 same plot for wholesale without a special use exception permit.

7 a. Persons engaged in the sale of cottage foods must comply
8 with Ch. 500.80, Florida Statutes and must obtain a certificate
9 of use for the retail sale of cottage foods on the property.

10 (2) A plant nursery may sell materials that are customarily
11 incidental to the installation, maintenance, and use of such
12 plant products with a special use exception permit.

13 a. By way of example, the following are classified as
14 incidental materials: stepping stones, river rocks, railroad
15 ties, ponds, mulch, topsoil, fertilizer, and tree-bracing kits.

16 b. By way of example, the following are not incidental
17 materials: lawn furniture, pergolas, including benches and
18 picnic tables, gazebos, pavers, decorative fountains,
19 statues, recreational and playground equipment, pools and
20 hot tubs, household goods, and rugs.

21 c. The outdoor display of incidental landscape materials must
22 be screened from the view of adjacent properties.

23 (3) The following are requirements of all special exception use permits for
24 plant nurseries with incidental retail sales, unless the applicant receives
25 a unanimous vote of the five (5) members of the town council to waive
26 or modify a requirement for a particular application based upon unique
27 circumstances of approval:

28 a. The applicant must possess an active agricultural classification from
29 the Property Appraiser, on the entire property being considered,
30 pursuant to Chapter 193.461, Florida Statutes, as may be amended
31 from time to time.

32 b. The applicant must possess a valid certificate of registration from the
33 Florida Department of Agriculture and Consumer Services.

Ordinance No. 2018-___

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1 c. The applicant shall make an application for a special use exception
2 permit using the form prescribed by the Town and shall provide the
3 following information to demonstrate how the incidental retail sales will
4 be conducted in a manner that is consistent with the character of the
5 surrounding neighborhood and will not create a nuisance: hours of
6 operation; detailed site plan that addresses building size, adequate
7 parking for employees and patrons including handicapped parking,
8 restrooms, ingress and egress of vehicular traffic, setbacks from the
9 street and adjacent properties, outdoor equipment screening or
10 storage, and screening of items for retail sale stored outside.

11 (V) Commercial landscape maintenance operations.

12 (1) Commercial landscape maintenance operations are permitted as an
13 accessory use to a plant nursery provided that the owner obtains a special use
14 permit and that the use is incidental to the plant nursery's primary use of the
15 premises for the cultivation of plants.

16 a. The applicant shall make an application for a special use exception
17 permit using the form prescribed by the Town and shall provide the
18 following information to demonstrate how the incidental commercial
19 landscape maintenance operation will be conducted in a manner that is
20 consistent with the character of the surrounding neighborhood and will
21 not create a nuisance: hours of operation; detailed site plan that
22 addresses building size, adequate parking for employees including
23 handicapped parking, restrooms, ingress and egress of vehicular
24 traffic, setbacks from the street and adjacent properties, and outdoor
25 equipment screening or storage.

26 b. The applicant must obtain all local, state and federal permits and
27 insurance for the on-site storage of fuel for the trucks or equipment
28 used in the commercial landscape maintenance operation.

29 c. The applicant may not store, recycle or otherwise process any
30 vegetative debris or yard trash on the property.

31 d. Mulching or grinding of yard waste is not permitted.

32 e. The use of air curtain incinerators is not permitted unless the Town
33 Council approves it as part of the conditions to the issuance of the
34 special use permit. Air curtain incinerators used in connection with a
35 commercial landscape maintenance operation must be permitted and
36 accordance with all local, state and federal laws. Air curtain

Ordinance No. 2018-___

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1 incinerators may not be used on properties with fewer than five (5)
2 acres.

3 f. The parking and storage of equipment, machinery and
4 trucks that are not owned or leased by the applicant or are not used
5 solely in the commercial landscape maintenance operation is prohibited.

6 * * *

7 **Section 4.** Article 45, "Agricultural and Rural Districts," Section 045-050,
8 "Permitted and Prohibited Uses" is hereby amended as follows:

9 Sec. 045-050. – Permitted, accessory, conditional, special exception and
10 prohibited uses.

11 Plots in rural and agricultural districts may be used for one (1) or more of
12 the uses that are specified below as being permitted or conditionally permitted
13 uses. Special exception uses require town council approval pursuant to article
14 112:

Key to abbreviations:			
P=Permitted use	NP=Not permitted	C=Conditional use	SE=Special exception use

Permitted Principal Uses	A-1	A-2	RE	RR
One single-family detached dwelling on a lot of record	P	P	P	P
Nonprofit neighborhood social and recreational facilities	P	P	P	P
Cemetery (subject to section 045-030(U))	P	NP	NP	NP
Community residential facilities (subject to section 045-030(S))	P	P	P	P
Sale of farm products for wholesale (subject to section 045-030(J))	P	P	P	P
Farm product retail sales (subject to section 045-030(J))	SE	SE	SE	SE
Essential services (subject to section 045-030(K))	P	P	P	P
Fish breeding (commercial and noncommercial)	P	P	P	P

Ordinance No. 2018-____
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Keeping, breeding of animals (subject to section 045-030(F))	P	P	P	P
Commercial equestrian operations	P	P	P	P
Veterinary clinics (no overnight stay or animal runs)	P	P	NP	NP
Veterinary hospitals	NP	P	NP	NP
Kennels, commercial boarding and breeding	NP	P	NP	NP
Cannabis-related uses	NP	NP	NP	NP
Wireless communication facilities (subject to article 40, "Telecommunication Towers and Antennas.")	P	P	P	P
Commercial landscape maintenance operations (subject to section 045-030(V))	SE	SE	SE	SE
Sale of cottage food products for retail (subject to section 045-030(J))	P	P	P	P
Retail Sale of Items Incidental to Plant Product Sales (subject to section 045-030(J))	SE	SE	SE	SE
<i>Permitted accessory uses to a single-family dwelling</i>				
Detached guesthouse (subject to section 045-030(G))	P	P	P	P
Exhibition of Class I and Class II wildlife (subject to section 035-070 pertaining to conditional uses)	C	C	NP	C
Keeping, breeding of animals (subject to section 045-030(F))	P	P	P	P
Yard sales (subject to section 035-060 pertaining to conditional uses)	C	C	C	C
Home offices (subject to section 035-030 pertaining to conditional uses)	C	C	C	C
Family day care homes	P	P	P	P
Cannabis-related uses	NP	NP	NP	NP
Accessory structures and uses, other	P	P	P	P

Ordinance No. 2018-___

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Section 5. Article 60, "Community Facility District," Section 060-030, "Permitted and Prohibited Uses" is hereby amended as follows:

Sec. 060-030. – Permitted, accessory, conditional, special exception and prohibited uses.

Permitted uses in the community facility district shall be limited to those uses specified as permitted or conditionally permitted uses in the master use list. Special exception uses require town council approval pursuant to article 112. All permitted uses shall be governmentally owned (public) or operated, or not-for-profit, unless otherwise specified. Uses are subject to applicable provisions of section 060-090, "Limitations of uses." Specific subsection references are included in the following master use list:

Master Use List

P=Permitted use	C=Conditional use	A=Accessory use only	SP=Special exception use	NP=Not permitted
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Use	
Accessory dwelling (see section 060-090(A))	A
Agricultural uses (subject to section 060-020(I), "Animals")	P
Cannabis-related uses	NP
Cemeteries (see section 060-090(B))	P
Cemeteries accessory to a place of worship (see section 060-090(B))	A, C
Civic center, incl. library, museum, art gallery and other such exhibitions	P
Community residential facilities (see section 060-090(C))	P
Day care or preschool, accessory to place of worship or primary school only	A
Essential services	P
Fire protection facilities	P
Funeral home accessory to a cemetery	A
Governmental administration offices	P
Outdoor events (see section 035-040, "Outdoor event permits")	C

Ordinance No. 2018-__

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Parks, public	P
Places of worship (see section 060-060, 060-090(D) and 060-090(E))	P
Farm product and plant nursery retail sales (subject to article 45, section 045-030(J))	SE
Police protection facilities	P
School, primary and secondary, public or private (see section 060-090 (D))	C
Commercial landscape maintenance operations	SE
Wireless communication facilities (see article 40, "Telecommunication Towers and Antennas")	P

1

2 **Section 6.** Article 100, "Application Submittal and Notice Procedures,"
3 Section 100-020, "General Application Requirements," is hereby amended as
4 follows:

5 * * *

6 (C) *Traffic study.* Applications for plan amendment, site plan, special exception
7 use, variance, or rezoning that could result in an increase in the density or
8 intensity of permitted uses, specifically excluding any variance for one (1)
9 single-family residence, shall submit to the town a traffic study assessing
10 the proposed development's vehicular, pedestrian and bicycle access; on-
11 site circulation; parking; any proposed roadway or easement vacations or
12 road closures, whether permanent or temporary for construction purposes;
13 and off-site roadway impacts, including net traffic impact and traffic impact
14 within adjacent neighborhoods. The traffic study shall utilize the most
15 current edition of the Institute of Transportation Engineers' Trip Generation
16 manual and shall use generally accepted methodologies. The town
17 administrator may waive any or all of the traffic study requirements upon
18 consideration of a report issued by the town's zoning department
19 determining that the study or any portion thereof is not necessary based
20 upon the location, intensity of use. and other facts specific to an
21 application.

Ordinance No. 2018-____
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Section 7. Article 100, "Application Submittal and Notice Procedures," Section 100-030, "Minimum Required Content For All Public Hearing Notifications," is hereby amended as follows:

* * *

(C) *Sign notices.* The petitioner shall be responsible for posting a sign along each property line of the subject property with street frontage for the following applications: land use plan amendments, zoning map amendments, variances, special exception uses, and site plans. The notice shall be posted so as to be visible from each public right-of-way abutting the subject property, and shall be at least six (6) square feet in area. The sign shall state the nature of the request and the phone number to call for further information. The town administrator shall provide the applicant with the specific language required to appear on the sign for each application. The petitioner shall provide proof of the sign posting no later than one (1) business day following the posting date required by section 100-040, "Timing of public notice." Proof shall consist of one (1) or more photographs of the sign placed upon the site, as necessary to demonstrate the location of the real property upon which the sign is posted, and the exact location of the sign upon the property. A notarized affidavit, signed by the petitioner or sign company responsible for posting the sign, shall accompany the photographs. Other proof may be provided if acceptable to the town administrator. If the applicant fails to submit the affidavit, processing of the application shall cease until such affidavit is received. The sign shall be removed by the applicant within five (5) working days after the application receives final disposition. The sign shall be exempt from all sign and permit regulations.

Section 8. Article 100, "Application Submittal And Notice Procedures," Section 100-060, "Mail Notice Requirements For Public Hearings" is hereby amended as follows:

* * *

Ordinance No. 2018-____
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1 (B) *Prescribed distances for notification.* Properties located within the distances
2 prescribed in subsections (B)(1) through (B)(5) of the section shall be
3 notified by mail of any of the following pending application types:

4 (1) *Variances:* One thousand five hundred (1,500) feet, except that
5 variance requests from minimum distance separations required by the
6 ULDC shall be noticed using the same distance as the request for
7 variance.

8 (2) *Rezoning:* One thousand five hundred (1,500) feet.

9 (3) *Future land use plan map amendments:* One thousand five hundred
10 (1,500) feet.

11 (4) *Site plans:* One thousand five hundred (1,500) feet.

12 (5) *Appeal of administrative decisions:* One thousand five hundred (1,500)
13 feet.

14 (6) *Plats and waiver of plats:* One thousand five hundred (1,500)
15 feet.

16 (7) *Special exception uses:* One thousand five hundred (1,500) feet.

17
18
19 **Section 9.** Article 112, "Special Exception Uses" is hereby created as
20 follows:

21 ARTICLE 112. -SPECIAL EXCEPTION USES.

22 Sec. 112-010. Purpose.

23 This article establishes the procedures and requirements for review of
24 applications to establish special exception uses.

25 Sec. 112-020. Applicability.

26 Uses identified in zoning district regulations as special exception uses shall be
27 established only after submittal of an application for special exception use and approval
28 by the town council.

29 Sec. 112-030. - Procedure.

Ordinance No. 2018-___

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- 1 (A) *Filing of petition.* Applications for special exception use shall be filed on
2 forms provided by the Town and shall be submitted to the Town
3 Administrator. The property owner must be the applicant for the special
4 exception use. The applicant as owner must be the operator of the use
5 unless otherwise provided in the special exception use permit.
- 6 (B) *Review and scheduling of petition for public hearing.* Upon receipt of a
7 completed application and processing fee, and upon receipt of any
8 additional documentation that the town may request, the Town
9 Administrator shall review the application and prepare a report which, at a
10 minimum, details the facts and circumstances pertaining to the requested
11 special exception use. Upon completion of such report, the application shall
12 be duly advertised and scheduled before the Town Council, at the next
13 available regular council meeting that considers quasi-judicial items.
- 14 (C) *Notice.* Notice shall be provided pursuant to the requirements in Article 100
15 pertaining to special exception uses.
- 16 (D) *Application fee.* There shall be an application fee deposit for each
17 application in an amount set by the town administrator. The petitioner shall
18 be responsible for all costs associated with petition processing plus costs
19 incurred by the town.
- 20 (E) *Public hearing procedure.* The town council shall hear the application
21 pursuant to the town's quasi-judicial procedures set forth in article 105.
- 22 (F) *Burden of proof under quasi-judicial procedures.* In making a presentation,
23 the petitioner shall bear the burden of demonstrating by competent
24 substantial evidence that the evidence on the record demonstrates that the
25 special exception use should be granted.
- 26 (G) *The vote.* A special exception may be granted upon receiving five (5)
27 affirmative votes of the town council.
- 28 (H) *Recordation.* The Town Council's decision concerning any special exception
29 use application shall be recorded in the public records of the county.

30
31 Sec. 112-040. Review criteria.

32 A special exception use shall be granted only when the Town Council determines
33 that the use will be congruous and in harmony with the uses, improvements
34 and character of the surrounding area, such that it will not create or foster
35 undesirable health, safety or aesthetic effects, or otherwise constitute a

Ordinance No. 2018-___

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1 disruption that detracts from the peaceful enjoyment or value of surrounding
2 and nearby properties arising from any of the following:

- 3 (a) Density or intensity of use
- 4 (b) Scale of use and improvements
- 5 (c) Placement, design and orientation of functions and improvements
- 6 (d) Hours of operation
- 7 (e) Aesthetics
- 8 (f) Noise
- 9 (g) Vibration
- 10 (h) Dust
- 11 (i) Fumes and emissions
- 12 (j) Odor
- 13 (k) Glare
- 14 (l) Nighttime lighting
- 15 (m) Shadow effect
- 16 (n) Vehicular traffic generation including vehicle type, site access and
17 circulation
- 18 (o) Drainage
- 19 (p) Impact on adjacent properties
- 20 (q) Parking
- 21 (r) Fueling of vehicles and equipment
- 22 (s) Number of employees
- 23 (t) Other conditions, effects or impacts that may be applicable

24
25 Sec. 112-050. Effect of approval.

- 26 (A) A special exception use permit, issued pursuant to the requirements of this
27 article, grants to the applicant the right to develop and/or utilize the subject
28 premises in accordance with the terms and conditions contained in the
29 resolution approving the special exception use, unless otherwise provided in
30 such resolution.
- 31 (B) Operation of an approved special exception use shall not be commenced
32 until the Town has verified that all conditions of approval applicable to the
33 establishment of the use have been satisfied, and has issued a certificate of
34 use.
- 35 (C) Approval of a special exception use shall run with the property owner once
36 established (i.e., not expired or revoked), and shall not be transferable.

Ordinance No. 2018-___

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1 (D) Representations made in the application and on the record at the public
2 hearing shall be part of the conditions of approval of such use, whether or
3 not such representations are incorporated into the special exception use
4 permit.

5
6 Sec. 112-060. Expiration of special exception uses.

7 (A) *Expiration.* All special exception use approvals shall expire unless the
8 applicant obtains a certificate of use from the town within one hundred
9 eighty (180) days of the date of approval, unless otherwise provided in the
10 special exception use permit. A certificate of use shall not be issued unless
11 all conditions of special permit use approval pertaining to the establishment
12 of the use have been satisfied.

13 (B) *Due diligence.* It shall be the responsibility of the applicant to ensure that a
14 special exception permit does not expire.

15 (C) *Extensions.* The Town Administrator may grant an extension of not more
16 than six (6) months upon written request from the applicant, prior to
17 expiration, that includes a demonstration of good cause for the delay. Good
18 cause may include, but shall not be limited to, delay caused by
19 governmental action or inaction or other factors beyond the control of the
20 applicant.

21 (D) *Discontinuance.* If, for any reason, the special exception use ceases or is
22 discontinued for a period of six (6) or more months, the premises shall not
23 thereafter be used for that special exception use without the subsequent
24 approval of a new special exception use application in accordance with this
25 article.

26
27 Sec. 112-070. Modification of approved special exception use.

28 Amendments to an approved special exception use shall be processed and
29 reviewed in accordance with the procedures and standards set forth in this
30 article for new special exception uses.

31
32 Sec. 112-080. Inspections.

33 All premises for which the Town has granted a special exception use permit are
34 subject to inspection by the Town on a periodic basis, but not less than annually,

1 to ensure compliance with all requirements of this article and conditions of
2 approval.

3
4 Sec. 112-090. Revocation.

5 (A) The Town council may revoke a special exception use permit or modify its
6 terms of approval after conducting a public hearing that is noticed pursuant
7 to the requirements in Article 100 for special exception uses upon any of
8 the following occurrences:

9 (1) Failure to adhere to the representations made in the application and to
10 the terms and conditions of the approval.

11 (2) A repeat violation as defined in sec. 2-149 of this code.

12 (3) Code violation that is not remedied within the timeframe the town has
13 allotted.

14 (4) A third violation of this code within any five (5) year period.

15 (B) Upon any of the foregoing instances, the Town Administrator shall refer the
16 matter to the Town Council for public hearing, with written notice given to
17 the special exception use permit holder and the general public as provided
18 in Article 100 for special exception uses. At the conclusion of the hearing,
19 the Town Council may modify the terms of the permit or revoke the permit
20 based upon a majority vote.

21 (C) Upon revocation of special exception use permit, the town shall not process
22 any subsequent application for the same property or by the same applicant
23 for twelve (12) months.

24
25 Sec. 112-100. Status of special exception uses established without town council
26 approval pursuant to this article.

27 When a use that was established as permitted by right (a permitted use or use
28 indicated by a "P" in a particular zoning district), and the ULDC is later amended
29 to designate the use as a special exception use, that use shall be considered a
30 lawful special exception use. Town council approval pursuant to this article is
31 required before any expansion of the use outside of the plot or portion thereof
32 occupied by the use as of the date the ULDC is amended to designate the use as
33 a special exception use.

Ordinance No. 2018-___

New text is underlined and deleted text is ~~stricken~~

1 **Section 11: Non-conforming Uses.** Any person engaged in plant nursery
2 retail sales or a commercial landscape maintenance operation on the effective date of
3 this Ordinance shall be deemed to be a legal non-conforming use through December
4 31, 2021, provided that such property owner obtains a certificate of use pursuant to
5 Section 005-120 by March 1, 2019. Failure to obtain a certificate of use by March 1,
6 2019, shall render such use to be unlawful. Provided that a property owner has
7 obtained a certificate of use by March 1, 2019, such property shall be deemed to be a
8 legal non-conforming use through December 31, 2021. Any property owner desiring to
9 extend the term of their plant nursery retail sales or commercial landscape operation
10 thereafter must obtain a Special Use Exception Permit by December 31, 2021, or such
11 use thereafter shall be deemed to be unlawful.

12 **Section 12: Codification.** The Town Clerk shall cause this ordinance to be
13 codified as a part of the ULDC during the next codification update cycle.

14 **Section 13: Conflicts.** All Ordinances or parts of Ordinances, Resolutions or
15 parts of Resolutions in conflict herewith, be and the same are hereby repealed to the
16 extent of such conflict.

17 **Section 14: Severability.** If any word, phrase, clause, sentence or section of
18 this Ordinance is, for any reason, held unconstitutional or invalid, the invalidity thereof
19 shall not affect the validity of any remaining portions of this Ordinance.

20 **Section 15: Effective Date.** This Ordinance shall take effect immediately
21 upon passage and adoption.

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PASSED ON FIRST READING this ___ day of _____, 2018 on a motion made by _____ and seconded by _____.

PASSED AND ADOPTED ON SECOND READING this ___ day of _____, 2018, on a motion made by _____ and seconded by _____.

McKay	_____	Ayes	_____
Breitkreuz	_____	Nays	_____
Fisikelli	_____		
Jablonski	_____	Absent	_____
Schroeder	_____	Abstaining	_____

Doug McKay, Mayor

ATTEST:

Russell Muñiz, MMC, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:

Keith Poliakoff, J.D., Town Attorney

115103434.1

Ordinance No. 2018-____
New text is underlined and deleted text is ~~stricken~~