

## LAND DEVELOPMENT CODE AMENDMENT

**PETITION**

PL2020000XXXX

**ORIGIN**

Growth Management  
 Community Development  
 Department (GMCDD)

**SUMMARY OF AMENDMENT**

This Land Development Code (LDC) amendment proposes to update LDC section 5.02.00 Home Occupations to ensure consistency between the County’s regulations and the changes that were recently made to the Florida Statutes relative to home-based businesses.

**HEARING DATES**

BCC	TBD
CCPC	TBD
DSAC	TBD
DSAC-LDR	TBD

**LDC SECTION TO BE AMENDED**

5.02.00	Home Occupations
5.02.01	Applicability
5.02.02	Allowable Home Occupation Uses
5.02.03	Standards

### ADVISORY BOARD RECOMMENDATIONS

**DSAC-LDR**  
TBD

**DSAC**  
TBD

**CCPC**  
TBD

**BACKGROUND**

The original provisions for home occupations were introduced into the LDC pursuant to Ordinance 1980-04. The standards have remained relatively unchanged since 1980, except for several minor amendments that have been made, the most recent occurring in 2005. The adoption of Ordinance 1995-31 placed the current limitations on home occupations that prohibit customers, employees, and clients from visiting the home.

In 2021, the home-based business provisions in the Florida Statutes were updated, causing an inconsistency between the County regulations and the State law. With its preemption clause, the new provisions in the Florida Statutes changes the manner in which local governments may regulate home-based businesses. The Florida State Senate introduced Senate Bill 266 (SB 266) with “the legislative intent to encourage small and home-based business enterprises to use residential property in ways consistent with residential use.” The Florida House of Representatives passed CS/HB 403 on April 30, 2021, which was processed concurrently with SB 266. Per the House of Representatives Staff Final Bill Analysis, CS/HB 403 provided that “the local government may not enact or enforce any ordinance, regulation, or policy, or take any action to license or otherwise regulate a home-based business in a manner that is different from other businesses in a local government’s jurisdiction.” CS/HB 403 also established criteria that businesses must meet in order to be considered a home-based business. The bill also stipulated that adversely affected current or prospective home-based business owners the ability to challenge any local government action regulating home-based businesses. The bill was approved by the Governor on June 29, 2021, and the law became effective on July 1, 2021. As such, the purpose and intent of this LDC amendment is to update LDC section 5.02.00 to comply with current State law.

**FISCAL & OPERATIONAL IMPACTS**

No fiscal impacts are anticipated.

**GMP CONSISTENCY**

To be provided by Comprehensive Planning Staff after first review.



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**EXHIBITS:** A) House of Representatives Staff Final Bill Analysis B) The Florida Senate Bill Analysis And Fiscal Impact Statement C) Florida Statute 559.955 D) Other Community Home-Based Business Regulations E) Ordinance 80-04 F) Ordinance 95-31 G) Ordinance 04-41 H) Ordinance 05-27

Amend the LDC as follows:

5.02.00 – Home Occupations/Home-Based Businesses

5.02.01 – Purpose and Intent

The intent of this section is to provide minimum standards for home occupations/ home-based businesses to ensure compatibility with the surrounding character and integrity of the residential neighborhood, while maintaining consistency with Section 559.995, Florida Statutes. Home occupations/ home-based businesses shall not be prohibited, restricted, regulated, or licensed in a manner that is different from other businesses except as otherwise provided in this section. A business is considered a home occupation/ home-based business if it operates, in whole or in part, from a residential property.

5.02.02 – Applicability

Home occupations/ home-based business shall be allowed inside any dwelling within any zoning district that permits residential dwellings as a permitted use.

5.02.03 – Standards

The home occupation/ home-based business shall be clearly incidental to the use of the dwelling. A home occupation/ home-based business shall meet the following criteria:

- A. The employees of the business who work at the residential dwelling must also reside in the residential dwelling, except that up to a total of two employees or independent contractors who do not reside at the residential dwelling may work at the business. More than one home occupation/ home-based business may occur on-premises; however, for all businesses based at the residential dwelling, the total number of employees working on-premises but do not reside at the residential dwelling, shall be limited to two. The business may have additional remote employees that do not work at the residential dwelling.
- B. Parking related to the business activities of the home occupation/ home-based business shall comply with residential parking requirements of the LDC, and the need for parking generated by the business shall not be greater in volume than would normally be expected at a similar residence where no business is conducted. Vehicles and trailers used in connection with the business must be parked in legal parking spaces that are not located within the right-of-way, on or over a sidewalk, or on any unimproved surfaces at the residence. Parking or storage of commercial vehicles or equipment shall be allowed only in compliance with the requirements for commercial vehicles as set forth in Chapter 130, Article III of the Code of Laws and Ordinances.
- C. As viewed from the street and neighboring residential properties, the use of the residential property is consistent with the uses of the residential areas that surround the property. External modifications made to a residential dwelling to accommodate a home occupation/ home-based business must conform to the residential character and architectural aesthetics of the neighborhood. The home-based business shall not conduct retail transactions at a structure other than the residential dwelling; however, incidental business uses and activities may be conducted at the residential property.

# DRAFT

Text underlined is new text to be added

Text strikethrough is current text to be deleted

- 1 D. The activities of the home occupation/ home-based business are secondary to the property's  
2 use as a residential dwelling.
- 3
- 4 E. All business activities shall comply with any relevant local or state regulations with respect  
5 to signage and equipment or processes that create noise, vibration, heat, smoke, dust,  
6 glare, fumes, or noxious odors. Relevant County regulations for this paragraph are those  
7 that apply to a residence where no business is conducted.
- 8
- 9 F. All business activities shall comply with any relevant local, state, and federal regulations  
10 with respect to the use, storage, or disposal of any corrosive, combustible, or other  
11 hazardous or flammable materials or liquids. Relevant County regulations for this paragraph  
12 are those that apply to residence where no business is conducted.

## 5.02.04 – Exceptions

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16 The application of LDC section 5.02.00, shall not supersede:

- 17
- 18 A. Any current or future declaration or declaration of condominium adopted pursuant to  
19 Chapter 718, Florida Statutes, cooperative document adopted pursuant to Chapter 719,  
20 Florida Statutes, or declaration or declaration of covenant adopted pursuant to Chapter 720,  
21 Florida Statutes.
- 22
- 23 B. This section shall not supersede, amend, or modify regulations, restrictions, or prohibitions  
24 related to transient public lodging establishments such as hotel/ motels, bed and breakfasts,  
25 and short-term rentals, that are not otherwise preempted under Chapter 509, Florida  
26 Statutes.

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28 # # # # # # # # # # # # #

## ~~Current LDC Language:~~

### ~~5.02.00 – HOME OCCUPATIONS~~

#### ~~5.02.01 Applicability~~

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36 ~~Home occupations shall be allowed in any zoning district which permits residential dwellings~~  
37 ~~as a permitted use.~~

#### ~~5.02.02 Allowable Home Occupation Uses~~

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41 ~~There shall be no retail sale of materials, goods, or products from the premises.~~

#### ~~5.02.03 Standards~~

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45 ~~The home occupation shall be clearly incidental to the use of the dwelling for dwelling~~  
46 ~~purposes. The existence of the home occupation shall not change the character of the dwelling.~~

# DRAFT

Text underlined is new text to be added

~~Text strikethrough is current text to be deleted~~

- 1 ~~A. An allowable home occupation shall be conducted by an occupant of the dwelling.~~
- 2 ~~B. There shall be no on-site or off-site advertising signs.~~
- 3
- 4 ~~C. The use shall not generate more traffic than would be associated with the allowable~~
- 5 ~~residential use. To that end, traveling to and from as well as meeting or parking at the~~
- 6 ~~residence by either employees of the business operated therefrom who are not residing at~~
- 7 ~~the subject address or by customers or clients of the home occupations is prohibited.~~
- 8
- 9 ~~D. There shall be no receiving of goods or materials other than normal delivery by the U.S.~~
- 10 ~~Postal Service or similar carrier.~~
- 11
- 12 ~~E. Parking or storage of commercial vehicles or equipment shall be allowable only in~~
- 13 ~~compliance with the requirements for commercial vehicles in the County Code.~~
- 14
- 15 ~~F. The on-site use of any equipment or materials shall not create or produce excessive noise,~~
- 16 ~~obnoxious fumes, dust, or smoke.~~
- 17
- 18 ~~G. The on-site use of any equipment or tools shall not create any amount of vibration or~~
- 19 ~~electrical disturbance.~~
- 20
- 21 ~~H. No on-site use or storage of any hazardous material shall be kept in such an amount as to~~
- 22 ~~be potentially dangerous to persons or property outside the confines of the home~~
- 23 ~~occupation.~~
- 24
- 25 ~~I. There shall be no outside storage of goods or products, except plants. Where plants are~~
- 26 ~~stored, no more than fifty (50) percent of the total square footage of the lot may be used for~~
- 27 ~~plant storage.~~
- 28
- 29 ~~J. A home occupation shall be subject to all applicable County occupational licenses and other~~
- 30 ~~business taxes.~~
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- 32 # # # # # # # # # # # #

# Exhibit A – House of Representatives Staff Final Bill Analysis

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/HB 403 Home-based Businesses  
**SPONSOR(S):** Commerce Committee, Giallombardo and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 266

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**FINAL HOUSE FLOOR ACTION:** 77 Y's 41 N's **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/HB 403 passed the House on April 21, 2021. The bill was amended in the Senate on April 29, 2021, and was returned to the House. The House concurred in the Senate amendment and further amended the bill on April 29, 2021. The Senate concurred in the House amendment and passed the bill as amended on April 30, 2021.

General law determines whether local governments are able to regulate businesses, and to what degree. Currently, some local governments have enacted ordinances specific to regulating home-based businesses, or businesses which operate out of a residence.

The bill provides that local governments may not enact or enforce any ordinance, regulation, or policy, or take any action to license or otherwise regulate a home-based business in a manner that is different from other businesses in a local government's jurisdiction. In order to be considered a home-based business, the bill requires that the:

- Business operates, in whole or in part, from a residential property;
- Employees of the business must reside in the residence, except for up to two employees or independent contractors who work at the residence and any number of remote employees;
- Parking related to business complies with local zoning requirements and may not be greater than would be expected at a residence where no business is conducted;
- Use and external modifications of the residential property are consistent with the uses, residential character, and architectural aesthetics of the neighborhood;
- Business complies with local regulations for signage, noise, vibration, heat, smoke, dust, glare, fumes, noxious odors, hazardous or flammable materials, vehicles, and trailers, provided that such regulations are not more stringent than those for a residence where no business is conducted;
- Business may not conduct retail transactions at a structure other than the residential dwelling, except incidental and short term business activities may be conducted at the residential property; and
- Activities of the home-based business are secondary to the use as a residential dwelling.

The bill provides that home-based businesses will only be subject to applicable business taxes in the county and municipality where the home-based business is located.

The bill allows any adversely affected current or prospective home-based business owner to challenge any local government action regulating home-based businesses. The prevailing party may recover reasonable attorney fees and costs.

The application of the bill does not supersede:

- Any current or future declaration or declaration of condominium, cooperative document, or homeowners' association declaration or declaration of covenant.
- Local laws, ordinances, or regulations related to transient public lodging establishments or vacation rentals that are not otherwise preempted under chapter 509.

The bill has an indeterminate fiscal impact on local governments and no fiscal impact on the state.

The bill was approved by the Governor on June 29, 2021, ch. 2021-202, L.O.F., and became effective on July 1, 2021.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.  
**STORAGE NAME:** h0403z1.DOCX  
**DATE:** 7/6/2021

# Exhibit A – House of Representatives Staff Final Bill Analysis

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Present Situation

##### Preemption

State preemption precludes a local government from exercising authority in a particular area, and requires consistency with the state constitution or state statute.<sup>1</sup> A local government enactment may be found inconsistent with state law if (1) the Legislature has preempted a particular subject area to the state or (2) the local regulation conflicts with a state statute.<sup>2</sup>

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.<sup>3</sup> Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.<sup>4</sup> When local ordinances have been enacted in the face of state preemption, the effect has been to find such ordinances null and void.<sup>5</sup>

Implied preemption is a legal doctrine that addresses situations in which the legislature has not expressly preempted an area but, for all intents and purposes, the area is dominated by the state. Findings of implied preemption are for a very narrow class of areas in which the state has legislated pervasively.<sup>6</sup>

##### Local Government Authority

General law authorizes counties "the power to carry on county government" and to "perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law."<sup>7</sup>

Non-charter county governments may exercise those powers of self-government that are provided by general or special law and may enact county ordinances not inconsistent with general law.<sup>8</sup>

Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by a vote of the electors.<sup>9</sup>

Municipalities may be established or abolished by general or special law.<sup>10</sup> Municipalities<sup>11</sup> have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform functions, provide services, and exercise any power for municipal purposes, except as

<sup>1</sup> James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), available at <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/>.

<sup>2</sup> *Id.*

<sup>3</sup> See *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).

<sup>4</sup> *Mulligan*, 934 So. 2d at 1243.

<sup>5</sup> See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

<sup>6</sup> Wolf and Bolinder, *supra* note 1.

<sup>7</sup> S. 125.01(1), F.S.

<sup>8</sup> Art. VIII, s. 1(f), Fla. Const.

<sup>9</sup> Art. VIII, s. 1(g), Fla. Const.

<sup>10</sup> Art. VIII, s. 2(a), Fla. Const. Under a separate provision, Miami-Dade County has sole authority to establish or abolish municipalities within the County. See art. VIII, s. 6(e), Fla. Const., incorporating art. VIII, s. 11, Fla. Const. (1885, as amended).

<sup>11</sup> A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term "municipality" may be used interchangeably with the terms "town," "city," and "village."

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otherwise provided by law.<sup>12</sup> Chapter 166, F.S., also known as the Municipal Home Rule Powers Act, defines municipal powers of self-government. It also provides municipalities with broad home rule powers to act in a manner not inconsistent with the Florida Constitution, general and special law, and the charter for the county in which the municipality is located.<sup>13</sup>

## Revenue Sources Authorized in the Florida Constitution<sup>14</sup>

The Florida Constitution limits the ability of local governments to raise revenue for their operations. The Florida Constitution provides:

No tax shall be levied except in pursuance of law. No state ad valorem taxes<sup>15</sup> shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.<sup>16</sup>

Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.<sup>17</sup>

However, not all local government revenue sources are taxes requiring general law authorization. When a county or municipal revenue source is imposed by ordinance, the question is whether the charge is a valid assessment or fee. As long as the charge is not deemed a tax, the imposition of the assessment or fee by ordinance is within the constitutional and statutory home rule powers of county and municipal governments. If the charge is not a valid assessment or fee, it is deemed a revenue source requiring general law authorization.

## Revenue Sources Based on Home Rule Authority

Pursuant to home rule authority, local governments may impose proprietary fees, regulatory fees, and special assessments to pay the cost of providing a facility or service or regulating an activity. A regulatory fee should not exceed the regulated activity's cost and is generally required to be applied solely to the regulated activity's cost for which the fee is imposed.<sup>18</sup>

## Local Business Tax

The local business tax authorized in ch. 205, F.S., represents the fees charged and the method by which a local government authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction.<sup>19</sup> Counties and municipalities may levy a business tax.<sup>20</sup>

## Community Planning

The Tenth Amendment to the U.S. Constitution reserves to the states all powers "not delegated to the United States by the Constitution, nor prohibited by it to the States."<sup>21</sup> Under this provision, states have

<sup>12</sup> Art. VIII, s. 2(b), Fla. Const. See also s. 166.021(1), F.S.

<sup>13</sup> S. 166.021(4), F.S.

<sup>14</sup> The Florida Legislature, Office of Economic and Demographic Research, 2019 Local Government Financial Information Handbook, p. 1, <http://edr.state.fl.us/Content/local-government/reports/lqfih19.pdf>.

<sup>15</sup> "Ad valorem tax" means a tax based upon the assessed value of property." Section 192.001(1), F.S.

<sup>16</sup> Art. VII, s. 1(a), Fla. Const.

<sup>17</sup> Art. VII, s. 9(a), Fla. Const.

<sup>18</sup> The Florida Legislature, Office of Economic and Demographic Research, 2020 Local Government Financial Information Handbook, p. 9, <http://edr.state.fl.us/Content/local-government/reports/lqfih20.pdf> (Feb. 10, 2021).

<sup>19</sup> S. 205.022(5), F.S.

<sup>20</sup> Ss. 205.033 and 205.043, F.S.

<sup>21</sup> U.S. CONST. amend. X.



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police powers to establish and enforce laws protecting the public's welfare, safety, and health.<sup>22</sup> These police powers provide counties and municipalities the authority to enact comprehensive zoning plans to lay out zones or districts where potential uses of real property may be forbidden or restricted.<sup>23</sup> A local government's ability to regulate and restrict the use of private property through community planning is not unlimited and must, ultimately, bear a substantial relation to the public health, safety, morals or general welfare.<sup>24</sup>

Section 163.3167, F.S., of the Community Planning Act<sup>25</sup> statutorily requires incorporated municipalities and counties to prepare and maintain a comprehensive plan to set out the regulations and policies governing land within a community. Comprehensive plans address both physical elements of land and buildings and the land uses permitted therein. Under s.163.3177, F.S., comprehensive plans are required to include elements that address the distribution, extent, and location of various land uses within a community. Some of the statute's land uses include residential, commercial, industrial, agricultural, recreational, conservation education, public, historic, and mixed-use categories.<sup>26</sup>

## Preemption of Local Licensing and Regulating Professions and Occupations

General law directs a number of state agencies and licensing boards to regulate certain professions and occupations. For example, the Department of Business and Professional Regulation (DBPR) currently regulates approximately 25 professions and occupations.<sup>27</sup>

General law determines whether local governments are able to regulate occupations and businesses, and to what degree.<sup>28</sup> If state law preempts regulation for an occupation, then, generally, local governments may not regulate that occupation.<sup>29</sup> For example, Florida law currently preempts local regulation with regard to the following:

- Zoning of family day care homes;<sup>30</sup>
- Zoning of community residential homes;<sup>31</sup>
- Pest control;<sup>32</sup>
- Assessing local fees in certain circumstances for contractors;<sup>33</sup>
- Assessing local fees for low-voltage alarm system projects;<sup>34</sup>
- Public lodging establishments and public food service establishments;<sup>35</sup>
- Food trucks;<sup>36</sup>
- Mobile home parks, lodging parks, recreational vehicle parks, and recreational camps;<sup>37</sup>
- Beekeeping;<sup>38</sup>
- Nonresidential farm buildings, farm fences and farm signs;<sup>39</sup>
- Insurers and agents;<sup>40</sup>

<sup>22</sup> See *NFIB v. Sebelius*, 567 U.S. 519, 535-536 (2012).

<sup>23</sup> *Village of Belle Terre v. Boraas*, 416 U.S. 1, 94 S. Ct. 1536 (1974).

<sup>24</sup> See *State of Washington ex rel. Seattle Title Trust Co. v. Roberge*, 278 U.S. 116, 121 (1928).

<sup>25</sup> See ch. 163, part II, F.S.

<sup>26</sup> S. 163.3177, F.S.

<sup>27</sup> S. 20.165, F.S.

<sup>28</sup> Art. VIII, s. 1(f), Fla. Const.; Art. VII, s. 9(a), Fla. Const.; Art. VIII, s. 2(b), Fla. Const.; s. 166.021(1), F.S.

<sup>29</sup> *Id.*; Wolf and Bolinger, *supra* note 1.

<sup>30</sup> S. 125.0109, F.S.

<sup>31</sup> S. 419.001, F.S.

<sup>32</sup> S. 482.242(1), F.S.

<sup>33</sup> S. 553.80(7)(d), F.S.

<sup>34</sup> S. 489.503(14), F.S.

<sup>35</sup> S. 509.032, F.S.

<sup>36</sup> S. 509.102, F.S.

<sup>37</sup> S. 513.051, F.S.

<sup>38</sup> Ss. 586.10(1) & 586.055, F.S.

<sup>39</sup> S. 604.50, F.S.

<sup>40</sup> S. 624.401(3), F.S.

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- Sellers of travel;<sup>41</sup>
- Movers of household goods and moving brokers;<sup>42</sup>

Conversely, Florida law also specifically grants local jurisdictions the right to regulate businesses, occupations and professions in certain circumstances.<sup>43</sup> For example, Florida law specifically authorizes regulations relating to:

- Zoning and land use;
- The levy of “reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter”;<sup>44</sup>
- The levy of local business taxes;<sup>45</sup>
- Building code inspection fees;<sup>46</sup>
- Tattoo establishments;<sup>47</sup>
- Massage practices;<sup>48</sup>
- Child care facilities;<sup>49</sup>
- Taxis and other vehicles for hire;<sup>50</sup> and
- Waste and sewage collection.<sup>51</sup>

## Home-based Business Regulations

Local governments have the authority to designate permitted land uses, such as commercial, residential, agricultural and industrial. Local governments have historically persevered the right for individuals to use residential dwellings to conduct business for certain activities deemed home occupations or home-based businesses. Such provisions have been incorporated in residential land use ordinances and are considered an accessory use to a residential property.<sup>52</sup> The overarching premise of such provisions is that residents may use a dwelling for business activities secondary to residential uses that do not change the residential character of the property. There is no enumerated right to or precise definition of a home-based business in Florida law.

Current home occupation ordinances vary on the types of businesses allowed, the activities authorized, and the permitting, licensing, fees and taxes imposed. Common home occupation regulation areas include residential character requirements, licensing/permitting/certification, permitted home occupations, prohibited home occupations, signage, employees, traffic and parking, storage and sale of merchandise, and floor area used for the home occupation.

Examples of local regulation of home-based businesses include:

- In Volusia County, home-based businesses are required to occupy no more than 25 percent of the habitable floor area of the residence.<sup>53</sup>

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<sup>41</sup> S. 559.939

<sup>42</sup> S. 507.13, F.S.

<sup>43</sup> See examples, Chapters 559 and 553, F.S.

<sup>44</sup> S. 166.221, F.S.

<sup>45</sup> Ch. 205, F.S.

<sup>46</sup> S. 166.222, F.S.

<sup>47</sup> S. 381.00791, F.S.

<sup>48</sup> S. 480.052, F.S.

<sup>49</sup> S. 402.306, F.S.

<sup>50</sup> S. 125.01(1)(n), F.S.

<sup>51</sup> S. 125.01(1)(k), F.S.

<sup>52</sup> See Law Insider, Dictionary, Definition of Accessory use, <https://www.lawinsider.com/dictionary/accessory-use> (Accessory use means a use which is incidental and subordinate to the principal use of the parcel of land on which it is located; use that is subsidiary to a permitted or discretionary use and that is customarily expected to occur with the permitted or discretionary use.)

<sup>53</sup> Volusia County, FL., Ch. 72, art. II, div. 8, s. 72-283.

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- In Tampa, home-based businesses are prohibited from storing or selling merchandise, and may not conduct business in any accessory building;<sup>54</sup>
- In Naples, home-based businesses are not allowed to conduct retail, wholesale, or warehousing activities at the residence;<sup>55</sup>
- In Gainesville, a home-based business may not have more than one automobile used for the home-based business parked on the premises within view of surrounding properties. Such automobile may not have more than two signs, not exceeding two square feet in area, each mounted flat against or painted along the sides;<sup>56</sup>
- Jacksonville limits home occupations to small-scale, limited businesses that do not detract from the residential character of the neighborhood, and limits the floor area that may be used by the home occupation;<sup>57</sup>
- Orlando requires home occupations to obtain an occupational license, and the applicant must also submit detailed information relating to the physical space of the home. Orlando also prohibits certain specified occupations;<sup>58</sup>
- Miami limits home occupations to specified occupations, and occupations that do not generate high vehicular demand and limits the workspace of certain specified occupations;<sup>59</sup>
- Miami-Dade County prohibits on-site signage related to a home occupation;<sup>60</sup>
- Winter Park prohibits employees other than family members living in the house, and prohibits the use of accessory buildings;<sup>61</sup> and
- Clearwater requires traffic generated by the home-based business to be no greater in volume than regular residential traffic, limits the use of commercial vehicles, and prohibits parking by marked vehicles on the property.<sup>62</sup>

Another common component of local home-based business ordinances is the method of enforcing the restrictions. Typically, local government code enforcement divisions are tasked with the enforcement of such ordinances. Other community residents may report violations to a code enforcement officer, who usually provides the violator with a warning about the behavior. If the restricted behavior continues, local governments have the authority to issue a civil infraction or penalty that the violator may contest in court.<sup>63</sup> Ch. 162, the Local Government Code Enforcement Boards Act, provides procedures and maximum fine amounts for citations. Refusal to sign and accept a citation could result in a local government issuing misdemeanor fines as described in s. 775.083, F.S.<sup>64</sup>

## **Effect of the Bill**

The bill provides that local governments may not:

- Enact or enforce any ordinance, regulation, or policy, or take any action to license or otherwise regulate a home-based business that does not meet the requirements of newly created s. 559.955, F.S.

<sup>54</sup> Tampa, FL., Ch. 27, art. VI, div. 2, s. 27-282.5.

<sup>55</sup> Naples, FL., Ch. 56, art. III, s. 56-92.

<sup>56</sup> Gainesville, FL., Ch. 30, art. V, div. 2, s. 30-5.37.

<sup>57</sup> Jacksonville, FL., Sec. 656.369(c)(1).

<sup>58</sup> Orlando, FL., Sec. 58.941 and 58.939. (Prohibited home occupations: Adult Entertainment, Antique Shops, Auto Service & Repair, Barber & Beauty Shops, Bed and Breakfast Facilities, Body Scrubs, Child Day Care Centers and Adult Day Care Centers, Churches, Clubs, Private, Commercial Physical Contact Establishments, Drive-in Facilities, Eating and Drinking Establishments, Escort Services, Food Processing and Handling, Fortune Tellers, Funeral Homes, Group Instruction of More Than (4) People, Health Spas, Hospitals and Clinics, Hotels/Motels, Kennels, Massage Establishments, Modeling of Clothes, Pain Management Clinic, Plasmapheresis Facilities, Vehicle Sales, Rental or Repair, Whole Blood Facilities.)

<sup>59</sup> Miami, FL., Sec. 622.7.

<sup>60</sup> Miami-Dade County, FL., Sec. 33-25.1(A)4.

<sup>61</sup> Winter Park, FL., Sec. 58-71(5).

<sup>62</sup> Clearwater, FL., Sec. 3-1102.A5 – 7.

<sup>63</sup> S. 162.21, F.S.

<sup>64</sup> Fines may be up to \$1,000, when the conviction is of a misdemeanor of the first degree, \$500, when the conviction is of a misdemeanor of the second degree or a noncriminal violation, or may be any higher amount equal to double the pecuniary gain derived from the offense by the offender or double the pecuniary loss suffered by the victim, or any higher amount specifically authorized by statute.

# Exhibit A – House of Representatives Staff Final Bill Analysis

- Prohibit, restrict, regulate or license home-based businesses in a manner that is different from other businesses in a local government's jurisdiction, except as provided in s. 559.955, F.S.

Home-based businesses may operate in an area zoned for residential use and are only subject to applicable business taxes in the county and municipality where the home-based business is located.

In order to qualify as a home-based business, the bill:

- Requires home-based businesses to operate, in whole or in part, from a residential property of which the activities of the home-based business must be secondary to the property's use as a residential dwelling.
- Requires employees of the home-based business who work at the residential dwelling to reside in the residential dwelling, except for up to a total of two employees or independent contractors may work at the home-based business but not reside there. Employees who work remotely are permitted.
- Requires parking related to business activities to comply with local zoning requirements, and the need for parking generated by the business may not be greater in volume than would normally be expected at a similar residence where no business is conducted.
  - Vehicles and trailers used in connection with the business must be parked in legal parking spaces that are not located within the right-of-way, on or over a sidewalk, or on any unimproved surfaces at the residence.
  - Local governments may regulate the use of vehicles or trailers operated or parked at the business or on a street right-of-way, provided that such regulations are not more stringent than those for a residence where no business is conducted.
  - Local governments may also regulate the parking or storage of heavy equipment<sup>65</sup> at the business which is visible from the street or neighboring property.
- Prohibits retail transactions from taking place at a structure other than the residential dwelling, except for incidental business uses and activities.
- Requires the use of the residential property to be consistent with the uses of the residential areas that surround the property and external modifications to conform to the residential character and architectural aesthetics of the neighborhood, as viewed from the street.
- Requires business activities to comply with any relevant local or state regulations with respect to signage and equipment or processes that create noise, vibration, heat, smoke, dust, glare, fumes, or noxious odors. However, such local regulations may not be more stringent than those that apply to a residence where no business is conducted.
- Requires all business activities to comply with any relevant local, state, and federal regulations with respect to the use, storage, or disposal of any corrosive, combustible, or other hazardous or flammable materials or liquids. However, such local regulations may not be more stringent than those that apply to a residence where no business is conducted.

The bill allows any adversely affected current or prospective home-based business owner to challenge any local government action regulating home-based businesses. The prevailing party may recover reasonable attorney fees and costs incurred in challenging or defending the action, including reasonable appellate attorney fees and costs.

The application of these provisions do not supersede:

- Any current or future declaration or declaration of condominium, cooperative document, or homeowners' association declaration or declaration of covenant.
- Local laws, ordinances, or regulations related to transient public lodging establishments or vacation rentals that are not otherwise preempted under chapter 509.

The bill provides an effective date of July 1, 2021.

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<sup>65</sup> "Heavy equipment" means commercial, industrial, or agricultural vehicles, equipment, or machinery.

# Exhibit A – House of Representatives Staff Final Bill Analysis

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

Indeterminate. The bill provides that home-based businesses will only be subject to applicable business taxes in the county and municipality where the home-based business is located.

#### 2. Expenditures:

Indeterminate. The bill allows a party to challenge any local government action regulating home-based businesses. The prevailing party is entitled to recover reasonable attorney fees and costs incurred in challenging or defending the action, including reasonable appellate attorney fees and costs.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more home-based businesses to operate more freely and efficiently.

### D. FISCAL COMMENTS:

None.

# Exhibit B – The Florida Senate Bill Analysis And Fiscal Impact Statement

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**  
 (This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 266  
 INTRODUCER: Senator Perry  
 SUBJECT: Home-based Businesses  
 DATE: March 4, 2021      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	<b>Pre-meeting</b>
2.	_____	_____	CM	_____
3.	_____	_____	RC	_____

**I. Summary:**

SB 266 preempts the licensing and regulation of home-based businesses to the state and prohibits counties and municipalities from restricting or regulating a home-based business. By operation of law, state preemption would cause existing local government ordinances related to home businesses and home occupations to become null and void.

The bill provides that the legislative intent is to encourage small and home-based business enterprises by allowing potential small business entrepreneurs to use residential property in ways consistent with residential use.

The bill includes criteria that home-based businesses must meet to operate in an area zoned for residential use. Home-based businesses may not have more than two employees who do not reside at the home or are not the residents' immediate family. Home-based businesses must comply with all local parking requirements and may not substantially increase traffic, noise, and waste or recycling. The bill also restricts home-based businesses to activities secondary to the property's use as a residential dwelling and consistent with the uses of surrounding residential property, as viewed from the street. These limitations on home-based businesses resemble current home occupation ordinances imposed by local governments.

The bill takes effect on July 1, 2021.

**II. Present Situation:**

**Home Rule Powers and Preemption**

*The Florida Constitution*

The Florida Constitution establishes and describes the duties, powers, structure, function, and limitations of government in Florida. Article VIII, section 1 of the Florida Constitution, endows

# Exhibit B – The Florida Senate Bill Analysis And Fiscal Impact Statement

counties and municipalities the power of self-government or home rule power. Under the home rule power, local governments have broad authority to exercise the state's sovereign police powers and legislate on any matter that is not inconsistent with the federal and state constitution and laws.

## ***Counties***

A county without a charter has such power of self-government as provided by general or special law and may enact county ordinances not inconsistent with general law.<sup>1</sup> Counties operating under county charters have all the powers of local self-government not inconsistent with general law or with special law approved by a vote of the electors.<sup>2</sup> General law authorizes counties "the power to carry on county government"<sup>3</sup> and to "perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law."<sup>4</sup>

## ***Municipalities***

Municipalities may be established or abolished, and their charters amended by general or special law. Municipalities have governmental, corporate, and proprietary powers to conduct municipal government, perform municipal functions, and render municipal services. They may exercise any of these powers for municipal purposes except as otherwise provided by law.<sup>5</sup> Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,<sup>6</sup> acknowledges these constitutional grants of police powers and better defines municipal powers of self-government.<sup>7</sup> Chapter 166, F.S., provides municipalities with broad home rule powers to act in a manner not inconsistent with the Florida Constitution, general and special law, and a charter for the county in which the municipality is located.<sup>8</sup>

## ***State Preemption***

Although local governments have broad home rule powers, the state legislature may preempt this self-government power and preclude local governments from exercising legislative authority in particular areas of law.<sup>9</sup> Florida law recognizes two types of preemption: express and implied.

Express preemption requires a specific legislative statement; it cannot be implied or inferred.<sup>10</sup> Express preemption of a field by the Legislature must be accomplished by clear

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<sup>1</sup> FLA. CONST. art. VIII, s. 1(f).

<sup>2</sup> *Id.* at (g).

<sup>3</sup> Section 125.01(1), F.S.

<sup>4</sup> *Id.* at (w).

<sup>5</sup> FLA. CONST. art. VIII, s. 2.

<sup>6</sup> Section 166.011, F.S.

<sup>7</sup> Florida House of Representatives, Publications, *The Local Government Formation Manual 2017-2018*, p. 16, available at: <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2911&Session=2017&DocumentType=General Publications&FileName=2017-2018 Local Government Formation Manual Final Pub.pdf> (last visited Mar. 3, 2021).

<sup>8</sup> Section 166.021(4), F.S.

<sup>9</sup> Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

<sup>10</sup> See *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So.3d 309 (Fla. 2008).

# Exhibit B – The Florida Senate Bill Analysis And Fiscal Impact Statement

language stating that intent.<sup>11</sup> In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.<sup>12</sup> On the other hand, implied preemption is found where the local legislation would present the danger of conflicting with the state's pervasive regulatory scheme.<sup>13</sup> Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area to the state, and there are strong public policy reasons for doing so.<sup>14</sup> In cases determining the validity of ordinances enacted in the face of express and implied state preemption, the effect has been to find such ordinances null, void, and unenforceable.<sup>15</sup>

## Community Planning

State police powers are derived from the Tenth Amendment to the U.S. Constitution, which affords states all rights and powers "not delegated to the United States."<sup>16</sup> Under this provision, states have police powers to establish and enforce laws protecting the public's welfare, safety, and health.<sup>17</sup> These police powers provide counties and municipalities the authority to enact comprehensive zoning plans to lay out zones or districts where potential uses of real property may be forbidden or restricted.<sup>18</sup>

Local governments first began implementing elements of community planning at the turn of the nineteenth century. Private property owners frequently challenged local governments' initial utilization of community planning restrictions as violating rights enumerated in state and U.S. constitutions. Eventually, the constitutionality of community planning restrictions was solidified by the U.S. Supreme Court in a series of decisions that held these land use restrictions were a constitutional exercise of a state's police powers.<sup>19</sup> In doing so, the early nineteenth century Supreme Court decisions noted that a local government's ability to regulate and restrict the use of private property through community planning is not unlimited and must, ultimately, bear a substantial relation to the public health, safety, morals or general welfare.<sup>20</sup>

<sup>11</sup> *Mulligan*, 934 So.2d at 1243.

<sup>12</sup> *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010).

<sup>13</sup> *See GLA & Assocs., Inc. v. City of Boca Raton*, 855 So. 2d 278, 282 (Fla. 4th DCA 2003).

<sup>14</sup> *Id.*

<sup>15</sup> *Thomas v. State*, 614 So.2d 468, 470 (Fla.1993); *Hillsborough County v. Fla. Rest. Ass'n*, 603 So.2d 587, 591 (Fla. 2d DCA 1992) ("If [a county] has enacted such an inconsistent ordinance, the ordinance must be declared null and void.")

<sup>16</sup> U.S. CONST. amend. X.

<sup>17</sup> "The States thus can and do perform many of the vital functions of modern government—punishing street crime, running public schools, and zoning property for development, to name but a few—even though the Constitution's text does not authorize any government to do so. Our cases refer to this general power of governing, possessed by the States but not by the Federal Government, as the police power." *See NFIB v. Sebelius*, 567 U.S. 519, 535-536 (2012).

<sup>18</sup> *Village of Belle Terre v. Boraas*, 416 U.S. 1, 94 S. Ct. 1536 (1974)

<sup>19</sup> *See Eubank v. city of Richmond*, 226 U.S. 137, 33 S.Ct. 76 (1912); *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 47 S.Ct. 114 (1926); *Nectow v. City of Cambridge*, 277 U.S. 183, 48 S.Ct. 447 (1928); *State of Washington ex rel. Seattle Title Trust Co. v. Roberge*, 278 U.S. 116, 49 S. Ct. 50 (1928)

<sup>20</sup> In *State of Washington ex rel. Seattle Title Trust Co. v. Roberge*, the Supreme Court stated: "Zoning measures must find their justification in the police power exerted in the interest of the public. The governmental power to interfere by zoning regulations with the general rights of the landowner by restricting the character of his use, is not unlimited and other questions aside, such restriction cannot be imposed if it does not bear a substantial relation to the public health, safety, morals, or general welfare. Legislatures may not, under the guise of the police power impose restrictions that are unnecessary and unreasonable upon the use of private property or the pursuit of useful activities."



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Today, s. 163.3167, F.S. of the Community Planning Act<sup>21</sup> statutorily requires incorporated municipalities and counties to prepare and maintain a comprehensive plan to set out the regulations and policies governing land within a community. Comprehensive plans address both physical elements of land and buildings and the land uses permitted therein. Under s.163.3177, F.S., comprehensive plans are required to include elements that address the distribution, extent, and location of various land uses within a community. Some of the statute's land uses include residential, commercial, industrial, agricultural, recreational, conservation education, public, historic, and mixed-use categories.<sup>22</sup>

## Residential Use Restrictions

Community zoning plans typically contain two significant distinctions of property use: residential and commercial. Property zoned for residential use requires residents to use a building or premises therein as a dwelling.<sup>23</sup>

Areas zoned for residential use may exclude other nonresidential buildings and uses. Residential use ordinances allow local governments to deny land uses not customary to a home or dwelling. Courts have opined that residential land use restrictions serve the public health, safety, morals, and general welfare by providing an attractive community, lessening congestion, increasing safety, and preventing overcrowding, among other things.<sup>24</sup> Although local governments may use similar definitions of residential use in an ordinance, counties and municipalities are free to decide the specific uses or terms allowed for this land.

As a practical matter, residential use restrictions largely exclude property uses that include most commercial or business operations. Residential use areas are often cordoned off from business zones to promote the state's interest in preserving the quality of home life for the community and ensuring residential neighborhoods' safety.<sup>25</sup> The traditional purpose for this categorical separation of residential and business uses has been to prevent unwanted secondary effects of a business operating in a residential area.<sup>26</sup>

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<sup>21</sup> See ch. 163, part II, F.S.

<sup>22</sup> Section 163.3177, F.S.

<sup>23</sup> Black's Law Dictionary 505 (6th ed. 1990) (*Dwelling* is defined as: "The house or other structure in which a person or persons live; a residence; abode; habitation; the apartment or building, or group of buildings, occupied by a family as a place of residence. Structure used as place of habitation.")

<sup>24</sup> *Flava Works, Inc. v. City of Miami*, 800 F.Supp.2d 1182 (S.D. Fla. 2011).

<sup>25</sup> *Voyeur Dorm, L.C. v. City of Tampa, Fla.*, 265 F.3d 1232 (11th Cir. 2001).

<sup>26</sup> In the landmark case, *Village of Euclid, Ohio v. Amber Realty Co.* (upholding the constitutionality of a broad residential zoning restriction on all land uses that did not constitute a single-family dwelling), the 1926 Supreme Court describes numerous secondary effects of allowing businesses to operate in a residential zone and states the benefits of exclusion. The Court reasoned exclusion of business uses would "prevent congestion of population, secure quiet residence districts, expedite local transportation, and facilitate the suppression of disorder, the extinguishment of fires, and the enforcement of traffic and sanitary regulations... The danger of fire and of contagion are often lessened... A place of business in a residence neighborhood furnishes an excuse for any criminal to go into the neighborhood, where, otherwise, a stranger would be under the ban of suspicion. Besides, open shops invite loiterers and idlers to congregate; and the places of such congregations need police protection. In the second place, the zoning of a city into residence districts and commercial districts is a matter of economy is street paving. Heavy trucks, hauling freight to and from places of business in residence districts, require the city to maintain the same costly pavement in such districts... [A]ny business establishment is likely to be a genuine nuisance in a neighborhood of residences. Places of business are noisy; they are apt to be disturbing at night; some of them are malodorous; some are unsightly; some are apt to breed rats, mice, roaches, flies, ants, etc... By reducing the traffic and

# Exhibit B – The Florida Senate Bill Analysis And Fiscal Impact Statement

## Home Occupation Ordinances

Although local governments have the authority to discriminate between commercial and residential land uses, local governments have historically persevered the right for individuals to use residential dwellings to conduct business for certain activities deemed home occupations. Home occupation provisions are widely incorporated in residential land use ordinances and are considered an accessory use<sup>27</sup> to a residential property.

Home occupation ordinances are not a modern idea. These accessory use provisions have been incorporated in land use ordinances since the early nineteenth century. In the 1928 Supreme Court case, *State of Washington ex rel. Seattle Title Trust Co. v. Roberge*, the land use ordinance being challenged included a home occupation provision that reads remarkably similar to home occupation provisions today.<sup>28</sup> The overarching premise of home occupation provisions that has remained unchanged for over a century is that residents may use a dwelling for business activities secondary to residential uses and don't disturb the residential character of the property. There is no enumerated right to or precise definition of a home occupation in Florida law. Local governments have the home rule power to include home occupation provisions in land use ordinances and define the provision as they see fit.

Current home occupation ordinances vary on the types of businesses allowed, the activities authorized, and the permitting and taxes imposed. Common home occupation regulation areas include residential character requirements, licensing/permitting/certification, permitted home occupations, prohibited home occupations, signage, employees, traffic and parking, storage and sale of merchandise, and floor area used for the home occupation.

The following excerpts are examples of local government ordinances addressing the common areas of home occupation regulation:

- **Residential character:** "Home occupations are intended to be small-scale, limited businesses that do not detract from the residential character of the neighborhood. Home occupations shall be accessory to the principal residential use."<sup>29</sup>
- **Licensing/Permitting/Certification:** "All home occupations shall be required to obtain an occupational license prior to the start of such use. In addition to any other submittals required for an occupational license, the applicant shall also submit the following: (a) Location of dwelling unit where the home occupation will be conducted; (b) Total floor area of the dwelling unit; (c) Area of room or rooms to be utilized in the conduct of the home occupation; (d) A sketch with dimensions showing the floor plan and the area to be utilized for the conduct of the home occupation; (e) A written description of the exact nature of the

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resulting confusion in residential sections, decrease noise and other conditions which produce or intensify nervous disorders." *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926) (quotations and citations omitted).

<sup>27</sup> Black's Law Dictionary 15 (6th ed. 1990) (*accessory use* is "a use which is dependent on or pertains to principal or main use; a use which is subordinate to, clearly incidental to, customary in connection with, and ordinarily located on same lot with, principle use").

<sup>28</sup> The exact language of the provision reads: "The office of a physician, dentist, or other professional person when located in his or her dwelling, also home occupations engaged in by individuals within their dwellings shall be considered as accessory uses, provided that no window display is made or any sign shown other than one not exceeding two (2) square feet in area and bearing only the name and occupation of the occupant." *State of Washington ex rel. Seattle Title Trust Co. v. Roberge*, 278 U.S. 116, 49 S. Ct. 50 (1928).

<sup>29</sup> Jacksonville, FL., Sec. 656.369(c)(1).

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home occupation; and (f) Notarized letter of approval for the home occupation from the property owner and/or property manager; (g) The Zoning Official may require a site plan indicating the location of all improvements."<sup>30</sup>

- **Permitted home occupations:** "Home occupation uses: (subject to all regulations set forth in section 906.5 and in addition to all those listed therein) Accountant, advertising agency, building contractor, credit reporting service, investigative service, insurance agent, market research service, optician, public relations service, real estate agency, stenographic service, stock broker, telephone answering service, telemarketing service, and other similar occupations which do not generate high vehicular demand."<sup>31</sup>
- **Prohibited home occupations:** "Notwithstanding any other provision of this Code, the following uses are hereby prohibited as home occupations: Adult Entertainment Antique Shops Auto Service & Repair Barber & Beauty Shops Bed and Breakfast Facilities Body Scrubs Child Day Care Centers and Adult Day Care Centers Churches Clubs, Private Commercial Physical Contact Establishments Drive-in Facilities Eating and Drinking Establishments Escort Services Food Processing and Handling Fortune Tellers Funeral Homes Group Instruction of More Than (4) People Health Spas Hospitals and Clinics Hotels/Motels Kennels Massage Establishments Modeling of Clothes Pain Management Clinic Plasmapheresis Facilities Vehicle Sales, Rental or Repair Whole Blood Facilities Also, any other similar use or activity as determined by the Zoning Official."<sup>32</sup>
- **Signage:** "No sign relating to the home occupation may be posted or displayed on the site."<sup>33</sup>
- **Employees:** "No person shall be engaged in any home occupation as an employee or volunteer worker other than members of the immediate family residing in the dwelling unit. No accessory building shall be used for such home occupation. Any home occupation that creates objectionable noise, fumes, odor, dust, electrical interference shall be prohibited."<sup>34</sup>
- **Traffic and parking:** "Traffic generated by the home occupation shall be no greater in volume than would normally be expected at a similar residence where no home occupation is conducted. The occupation shall not involve the use of a commercial vehicle for delivery of materials to or from the premises except for travel from the home occupation-site to a job location and to return, such trips not to exceed on the average more than two trips per day. No marked vehicle or equipment used in conjunction with the home occupation shall be parked on the property or contiguous to the street right-of-way so as to identify, advertise or otherwise attract attention to the occupation."<sup>35</sup>
- **Storage and sale of merchandise:** "No commodity shall be sold on the premises nor displayed or warehoused on the premises for sale elsewhere."<sup>36</sup>
- **Floor area used for home occupation:** "Home occupations may occupy up to 500 square feet or 25 percent of the floor area of the residence, whichever is less. If the property also has an accessory apartment, total floor area devoted to both uses shall not exceed 1,250 square feet or 35 percent of the floor area of the residence, whichever is less."<sup>37</sup>

<sup>30</sup> Orlando, FL., Sec. 58.941.

<sup>31</sup> Miami, FL., Sec. 622.7.2.

<sup>32</sup> Orlando, FL., Sec. 58.939.

<sup>33</sup> Miami-Dade County, FL., Sec. 33-25.1(A)4.

<sup>34</sup> Winter Park, FL., Sec. 58-71(5).

<sup>35</sup> Clearwater, FL., Sec. 3-1102.A.5 – 7.

<sup>36</sup> Tampa, FL., Sec. 27-282.5.(7).

<sup>37</sup> Jacksonville, FL., Sec. 656.369(c)(1)(A).

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Another common component of home occupation ordinances is the method of enforcing these restrictions. Typically, local government code enforcement divisions are tasked with the enforcement of home occupation ordinances. Other community residents may report violations to a code enforcement officer, who usually provides the violator with a warning about the behavior. If the restricted behavior continues, local governments have the authority to issue a civil infraction or penalty that the violator may contest in court. Repeated refusal to cease code violations could result in a local government issuing misdemeanor fines as described in s. 775.083, F.S.

## **Florida Business Address**

To establish a formal business organization in Florida, an individual must file specific paperwork with the Florida Department of State, Division of Corporations. Regardless of the corporate business structure, Florida law requires that the business provide the street address of its principal place of business, register agent, and persons owning the business.<sup>38</sup> Residential property may be used as a principal place of business for these corporate filings. It is unclear how using a residential home address as a principal place of business for state corporate filings is interpreted in the context of home occupation ordinances.

## **III. Effect of Proposed Changes:**

The bill preempts the licensing and regulation of home-based businesses to the state and prohibits counties and municipalities from restricting or regulating a home-based business. By operation of law, state preemption would cause existing local government ordinances related to home businesses and home occupations to become null and void.

To be considered a home-based business under the bill, the business must meet the following criteria:

- The business operates, in whole or in part, from residential property;
- The employees of the home-based business reside in the home, are immediate family to residents, or are two employees not required to be related or reside in the home;
- Parking related to the home-based business activities complies with local zoning requirements;
- The home-based business activities do not generate a substantial increase in traffic, noise, or waste and recycling;
- As viewed from the street, the use of the residential property is consistent with the uses of the residential areas that surround the property; and
- The home-based business activities are secondary to the property's use as a residential dwelling.

The bill allows a home-based business that meets the above criteria to operate from residential property and in an area zoned for residential use. Local governments are prohibited from enacting or enforcing any ordinance, regulation, or policy or taking any action to license or otherwise regulate a home-based business.

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<sup>38</sup> See s. 605.0201, F.S. (limited liability company); s. 607.0202, F.S. (corporation); s. 620.1111, F.S. (partnership).

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The bill takes effect on July 1, 2021.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

Article VII, section 18(b) of the Florida Constitution states that "[e]xcept upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989." Although the bill does not expressly mention local business taxes and fees, the bill may implicate this constitutional restriction by affecting counties and municipalities' ability to impose local businesses taxes on home businesses and home occupations pursuant to ch. 205, F.S.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

##### D. State Tax or Fee Increases:

None.

##### E. Other Constitutional Issues:

Restricting the number and types of persons allowed to engage in otherwise legal activities<sup>39</sup> conducted wholly within the confines of a private dwelling may unconstitutionally infringe on an individual's freedom of association<sup>40</sup> and right to privacy.<sup>41</sup> If these fundamental rights are implicated, the judiciary may require the State to demonstrate that limiting the number and types of persons allowed to work at a home-

<sup>39</sup> See *Henry v. Board of County Com'rs of Putnam County*, 509 So.2d 1221 (Fla. 5th DCA 1987)(describing that there is a considerable distinction between regulating the use of land and prohibiting the advertising for, and business use of, telephone located on residential property); see also *Coca-Cola Co., Food Division, Polk County v. State, Dept. of Citrus*, 406 So.2d 1079 (Fla.1981)(wherein the Florida Supreme Court discussed first amendment protection of commercial speech).

<sup>40</sup> "Our decisions establish that the First and Fourteenth Amendments protect the freedom to choose one's associates. Constitutional protection is extended, not only to modes of association that are political in the usual sense, but also to those that pertain to the social and economic benefit of the members... The freedom of association is often inextricably entwined with the constitutionally guaranteed right of privacy. The right to establish a home is an essential part of the liberty guaranteed by the Fourteenth Amendment. And the Constitution secures to an individual a freedom to satisfy his intellectual and emotional needs in the privacy of his own home." See *Village of Belle Terre v. Boraas*, 416 U.S. 1, 15 (1974)(Justice Marshall, dissenting; quotations and citations omitted).

<sup>41</sup> Courts have long recognized that the boundaries of a home create a constitutionally protected zone of privacy. See *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965). The Florida Constitution contains an explicit right to privacy which affords Florida citizens greater protection in the area of privacy than does the federal Constitution. See *State v. J.P.*, 907 So.2d 1101, 1115 (Fla. 2004).

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based business serves a compelling State interest and accomplishes its goals through the use of the least intrusive means.<sup>42</sup>

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

For small and family-owned businesses that operate in a local government jurisdiction with a more severe restriction on home occupations, the bill will likely provide a significant net positive fiscal impact by allowing these businesses to avoid the costs associated with commercial property. Notwithstanding, this positive fiscal impact may be negatively correlated to the market demand for small-scale commercial real estate.

**C. Government Sector Impact:**

The bill may have a negative fiscal impact on local governments that charge fees and taxes to individuals that engage in home occupations.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 559.955 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

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<sup>42</sup> It is settled law that each of the personal liberties enumerated in the Declaration of Rights of the Florida Constitution is a fundamental right. Florida courts consistently have applied the strict scrutiny standard whenever the Right of Privacy Clause was implicated, regardless of the nature of the activity. *See State v. J.P.*, at 1109. *See also Winfield v. Div. of Pari-Mutuel Wagering*, 477 So.2d 544 (Fla.1985)(explaining that where law intrudes on fundamental right to privacy guaranteed in Florida's Constitution, the State must demonstrate that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means).

# Exhibit B – The Florida Senate Bill Analysis And Fiscal Impact Statement

BILL: SB 266

Page 10

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B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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# Exhibit C – Florida Statute 559.955

## The 2021 Florida Statutes

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[Title XXXIII](#)  
REGULATION OF TRADE, COMMERCE,  
INVESTMENTS, AND SOLICITATIONS

[Chapter 559](#)  
REGULATION OF TRADE, COMMERCE, AND  
INVESTMENTS, GENERALLY

[View Entire  
Chapter](#)

### **559.955 Home-based businesses; local government restrictions.—**

- (1) Local governments may not enact or enforce any ordinance, regulation, or policy or take any action to license or otherwise regulate a home-based business in violation of this section.
- (2) A home-based business that operates from a residential property as provided in subsection (3):
- (a) May operate in an area zoned for residential use.
  - (b) May not be prohibited, restricted, regulated, or licensed in a manner that is different from other businesses in a local government’s jurisdiction, except as otherwise provided in this section.
  - (c) Is only subject to applicable business taxes under chapter 205 in the county and municipality in which the home-based business is located.
- (3) For purposes of this section, a business is considered a home-based business if it operates, in whole or in part, from a residential property and meets the following criteria:
- (a) The employees of the business who work at the residential dwelling must also reside in the residential dwelling, except that up to a total of two employees or independent contractors who do not reside at the residential dwelling may work at the business. The business may have additional remote employees that do not work at the residential dwelling.
  - (b) Parking related to the business activities of the home-based business complies with local zoning requirements and the need for parking generated by the business may not be greater in volume than would normally be expected at a similar residence where no business is conducted. Local governments may regulate the use of vehicles or trailers operated or parked at the business or on a street right-of-way, provided that such regulations are not more stringent than those for a residence where no business is conducted. Vehicles and trailers used in connection with the business must be parked in legal parking spaces that are not located within the right-of-way, on or over a sidewalk, or on any unimproved surfaces at the residence. Local governments may regulate the parking or storage of heavy equipment at the business which is visible from the street or neighboring property. For purposes of this paragraph, the term “heavy equipment” means commercial, industrial, or agricultural vehicles, equipment, or machinery.
  - (c) As viewed from the street, the use of the residential property is consistent with the uses of the residential areas that surround the property. External modifications made to a residential dwelling to accommodate a home-based business must conform to the residential character and architectural aesthetics of the neighborhood. The home-based business may not conduct retail transactions at a structure other than the residential dwelling; however, incidental business uses and activities may be conducted at the residential property.
  - (d) The activities of the home-based business are secondary to the property’s use as a residential dwelling.
  - (e) The business activities comply with any relevant local or state regulations with respect to signage and equipment or processes that create noise, vibration, heat, smoke, dust, glare, fumes, or noxious odors. Any local regulations on a business with respect to noise, vibration, heat, smoke, dust, glare, fumes, or noxious odors may not be more stringent than those that apply to a residence where no business is conducted.
  - (f) All business activities comply with any relevant local, state, and federal regulations with respect to the use, storage, or disposal of any corrosive, combustible, or other hazardous or flammable materials or liquids. Any local



## Exhibit C – Florida Statute 559.955

regulations on a business with respect to the use, storage, or disposal of any corrosive, combustible, or other hazardous or flammable materials or liquids may not be more stringent than those that apply to a residence where no business is conducted.

(4) Any adversely affected current or prospective home-based business owner may challenge any local government action in violation of this section. The prevailing party in a challenge may recover reasonable attorney fees and costs incurred in challenging or defending the action, including reasonable appellate attorney fees and costs.

(5) The application of this section does not supersede:

(a) Any current or future declaration or declaration of condominium adopted pursuant to chapter 718, cooperative document adopted pursuant to chapter 719, or declaration or declaration of covenant adopted pursuant to chapter 720.

(b) Local laws, ordinances, or regulations related to transient public lodging establishments, as defined in s. [509.013\(4\)\(a\)1.](#), that are not otherwise preempted under chapter 509.

*History.*—s. 1, ch. 2021-202.

# Exhibit D – Other Community Home-Based Business Regulations

## Broward County

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### Sec. 39-237. Home-based business.

*Home-based business.* Home-based business, as defined in Section 39-4, shall be permitted in all residential zoning districts subject to the following limitations:

- (a) Commercial vehicles associated with the home-based business in all residential districts, except A-1 and A-2, shall be subject to Section 39-275(7). Commercial vehicles in A-1 and A-2 districts shall be subject to Section 39-245(3)(d).
- (b) Employees of the business who work at the residential dwelling must also reside in the residential dwelling, except that up to a total of two (2) employees or independent contractors who do not reside at the residential dwelling may work at the business. The business may have additional remote employees that do not work at the residential dwelling.
- (c) Required parking related to the business activities of the home-based business must comply with the required parking of the principal residential use of the property, as required by Chapter 39, Article XII, Offstreet Parking and Loading, Broward County Code of Ordinances. The need for parking generated by the business may not be greater in volume than would normally be expected at a similar residence where no business is conducted.
- (d) Vehicles and trailers used in connection with the business must be parked in legal parking spaces that are not located within the right-of-way, on or over a sidewalk, or on any unimproved surfaces (including grass) at the residence.
- (e) Parking or storage of heavy equipment at the home-based business that is visible from the street or neighboring property is prohibited, unless otherwise permitted by the zoning district and permitted principal residential use of the property pursuant to Chapter 39, Article XII, Offstreet Parking and Loading, Broward County Code of Ordinances. For purposes of this paragraph, the term "heavy equipment" means commercial, industrial, or agricultural vehicles, equipment, or machinery.
- (f) External modifications made to a residential dwelling to accommodate a home-based business must conform to the residential character and architectural aesthetics of the neighborhood.
- (g) The home-based business may not conduct retail transactions at a structure on the same plat other than the residential dwelling; however, incidental business uses and activities may be conducted at the residential property.
- (h) The activities of the home-based business are secondary to the property's use as a residential dwelling.
- (i) All business activities must comply with any relevant local or state regulations with respect to signage and equipment or processes that create noise, vibration, heat, smoke, dust, glare, fumes, or noxious odors.
- (j) All business activities must comply with any relevant local, state, and federal regulations with respect to the use, storage, or disposal of any corrosive, combustible, or other hazardous or flammable materials or liquids.
- (k) The application of this section does not supersede:
  - (1) Any current or future declaration including, but not limited to, a declaration of condominium adopted pursuant to Chapter 718, Florida Statutes, cooperative document adopted pursuant to Chapter 719, Florida Statutes, or declaration of covenant adopted pursuant to Chapter 720, Florida Statutes; or

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(Supp. No. 60, Update 2)

# Exhibit D – Other Community Home-Based Business Regulations

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- (2) Local laws, ordinances, or regulations related to transient public lodging establishments, as defined in Section 509.013(4)(a)1, Florida Statutes, that are not otherwise preempted under Chapter 509, Florida Statutes.

(Ord. No. 96-16, § 2, 5-28-96; Ord. No. 1998-31, § 2, 9-8-98; Ord. No. 2013-04, § 2, 2-12-13; Ord. No. 2022-18, § 2, 4-27-22)

# Exhibit D – Other Community Home-Based Business Regulations

## Cape Coral

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### Section 5.11.10. Home based businesses.

Home-based businesses shall only be allowed as an accessory use to a residential use and must meet the following conditions:

- A. Home-based businesses shall comply with all applicable federal, state, county, and City laws, rules, and regulations, including, but not limited to, City business taxes.
- B. No more than two (2) employees or independent contractors who do not reside at the residential dwelling may work at the business. The business may have additional remote employees that do not work at the residential dwelling.
- C. Vehicles parked at home-based businesses must be parked in the driveway or other legal parking spaces that are not located within the right-of-way, on or over a sidewalk, or on or over any unimproved surfaces at the residence. All vehicles and trailers of any kind located at the residence must be in compliance with applicable parking regulations, including, but not limited to, Article 6 of this Code. The parking of any heavy equipment, such as commercial, industrial, or agricultural vehicles, equipment, or machinery is prohibited.
- D. As viewed from the street, the use of residential property is consistent with the uses of the residential areas that surround the property. External modifications made to a residential dwelling to accommodate a home-based business must conform to the residential character and architectural aesthetics of the neighborhood. The home-based business may not conduct retail transactions at a structure other than the residential dwelling; however, incidental business uses and activities may be conducted at the residential property.
- E. The business activities must comply with applicable City sign regulations in Article 7 of the Land Development Code.
- F. The business activities must comply with applicable local and state regulations with respect to equipment or processes that create noise, vibration, heat, smoke, dust, glare, fumes, or noxious odors.
- G. The business activities must comply with any relevant federal, state, county, and City regulations with respect to the use, storage, or disposal of any corrosive, combustible, or other hazardous or flammable materials or liquids.

(Ord. 69-21 , § 4, 10-20-2021)

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(Supp. No. 22)

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# Exhibit D – Other Community Home-Based Business Regulations

## Lakeland

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### Lakeland 5.10 HOME-BASED BUSINESSES

#### 5.10.1 INTENT AND APPLICABILITY

##### 5.10.1.1 Intent

Home-based businesses are businesses that operate in whole or in part from a residential property. It is the intent of this section to provide minimum standards for home-based businesses in order to ensure compatibility with surrounding land uses and consistency with Section 559.955, Florida Statutes.

##### 5.10.1.2 Applicability

Home-based businesses shall be conducted in accordance with these standards. Community Residential Homes and Family Day Care Homes as defined by Florida Statutes shall be permitted in residential zoning districts in accordance with applicable statutes and are not subject to the requirements of this section.

#### 5.10.2 STANDARDS FOR HOME-BASED BUSINESSES

- a. Employees of the business who work at the residential dwelling must also reside in the residential dwelling, except that up to a total of two employees or independent contractors who do not reside at the residential dwelling may work at the business. The business may have additional remote employees that do not work at the residential dwelling.
- b. The activities of the home-based business shall be secondary to the property's use as a residential dwelling. A home-based business may operate in a completely enclosed structure or a detached accessory structure. The home-based business may not conduct retail transactions at a structure other than the residential dwelling; however, incidental business uses and activities may be conducted at the residential property.
- c. As viewed from the street, the use of the residential property shall be consistent with the uses of the residential areas that surround the property. External modifications made to a residential dwelling to accommodate a home-based business shall conform with the residential character and architectural aesthetics of the neighborhood. There shall be no external advertising, external display of goods, or any other external evidence of any home-based business, except for signage in accordance with Section 4.9.
- d. All business activities shall comply with any relevant local, state, and federal regulations with respect to the use, storage, and disposal of any corrosive, combustible, or other hazardous or flammable materials or liquids.
- e. Such occupation shall not result in any continuous, intermittent, pulsating or other noise or vibration that can be detected by a normal person off the premises. The business activities shall comply with the City's Land Development Code and Code of Ordinances with respect to equipment or processes that create noise, vibration, heat, smoke, dust, glare, fumes, or noxious odors.
- f. Home-based businesses shall meet all requirements of this Code pertaining to the parking of commercial vehicles as specified in Sub-Section 5.17.3.6. Parking related to the business activities of the home-based business shall comply with the general parking requirements within the Land Development Code and the need for parking generated by the business may not be greater in volume than would normally be expected at a similar residence where no business is conducted. Vehicles and trailers used in connection with the business must be parked in legal parking spaces that are not located within the right-of-way, on or over a sidewalk, or on any unimproved surfaces at the residence. Heavy equipment used in conjunction with the home-based business shall not be visible from the street or any neighboring property. For the purposes of this section,

# Exhibit D – Other Community Home-Based Business Regulations

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the term "heavy equipment" shall mean commercial, industrial, or agricultural vehicles, equipment, or machinery.

(Ord. No. 5900, Att. C, 10-18-21)

Editor's note(s)—Ord. No. 5900, Att. C, adopted Oct. 18, 2021, amended § 5.10 in its entirety to read as herein set out. Former § 5.10 was entitled "Home Occupations," and derived from Ord. No. 5455, adopted July 21, 2014.

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(Supp. No. 3)

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Page 2 of 2

# Exhibit D – Other Community Home-Based Business Regulations

## Manatee County

Chapter 5 - STANDARDS FOR ACCESSORY AND SPECIFIC USES AND STRUCTURES  
PART II. - STANDARDS FOR ACCESSORY USES AND STRUCTURES.  
Section 511. - Specific Accessory Uses and Structures Allowed.  
511.7. Home Occupations/Home-Based Businesses.

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### *511.7. Home Occupations/Home-Based Businesses.*

Home occupations or home-based businesses are permitted in any dwelling unit or from any residential property, and may not be prohibited, restricted, regulated, or licensed in a manner that is different from other businesses except as otherwise provided and subject to the following provisions:

1. The employees of the business who work at the residential dwelling must also reside in the residential dwelling, except that up to a total of two employees or independent contractors who do not reside at the residential dwelling may work at the business. The business may have additional remote employees that do not work at the residential dwelling.
2. Vehicles and trailers used in connection with the business must be parked in legal parking spaces that are not located within the right-of-way, on or over a sidewalk, or on any unimproved surfaces at the residence.
3. The parking or storage of heavy equipment (i.e., commercial, industrial, or agriculture vehicles, equipment, or machinery) shall not be visible from the street or neighboring property.
4. As viewed from the street, the use of the residential property shall be consistent with the uses of the residential areas that surround the property. External modifications made to a residential dwelling to accommodate a home-based business must conform to the residential character and architectural aesthetics of the neighborhood.
5. The home-based business may not conduct retail transactions at a structure other than the residential dwelling; however, incidental business uses and activities may be conducted at the residential property.
6. The activities of the home-based business shall be secondary to the property's use as a residential dwelling.
7. The business activities of the home-based business shall comply the applicable LDC sections:
  - a. Chapter 6, Signs.
  - b. Chapter 5, Standards for Accessory and Specific Uses and Structures, Part V, Adverse Impact Performance Standards.
  - c. Such regulations in 7.a. and 7.b above shall not be more stringent than those that apply to a residence where no business is conducted.

(Ord. No. 19-03 , § 3(Exh. A-5), 3-21-19; Ord. No. 22-01 , § 3(Exh. A), 3-3-22)

Note(s)—For property in the Whitfield Residential Overlay District (WR), see LDC Section 403.13, for additional regulations.

# Exhibit D – Other Community Home-Based Business Regulations

## Volusia County

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### Sec. 72-283. Home-based businesses.

Home-based businesses must comply with all provisions of F.S. § 559.955, as may be amended. The provisions of F.S. § 559.955, are incorporated into this section as if fully laid out herein, may be enforced pursuant to Chapter 2, Article VII, of the Code, and shall prevail in the event of a conflict with this section.

A home-based business must operate, in whole or in part, from a residential property and must meet the below criteria:

- (1) *Employees.* The employees of the business who work at the residential dwelling must also reside in the residential dwelling, except that up to a total of two employees or independent contractors who do not reside at the residential dwelling may work at the business. The business may have additional remote employees that do not work at the residential dwelling.
- (2) *Parking and storage.*
  - a. Parking or storage must comply with all requirements of the Code for a residential property.
  - b. The need for parking generated by the business may not be greater in volume than would normally be expected at a similar residence where no business is conducted. No more than two dedicated parking spaces for the home-based business are permitted.
  - c. Vehicles and trailers used in connection with the business must be parked in legal parking spaces that are not located within the right-of-way, on or over a sidewalk, or on any unimproved surfaces at the residence.
  - d. Heavy equipment may not be parked or stored on the property unless it is completely screened from view from the street or neighboring property or unless it is parked or stored on conforming lots in Prime Agriculture (A-1) or Rural Agriculture (A-2) zoning classification . For purposes of this paragraph, the term heavy equipment means commercial, industrial, or agricultural vehicles, equipment, or machinery.
- (3) *Use of premises.*
  - a. As viewed from the street, the use of the residential property is consistent with the uses of the residential areas that surround the property.
  - b. External modifications made to a residential dwelling to accommodate a home-based business must conform to the residential character and architectural aesthetics of the neighborhood.
  - c. The home-based business may not conduct retail transactions at a structure other than the residential dwelling; however, incidental business uses and activities may be conducted at the residential property.
  - d. The activities of the home-based business are secondary to the property's use as a residential dwelling.
- (4) *Compliance with other laws, rules, and regulations.*
  - a. All business activities must comply with any relevant local or state regulations with respect to signage and equipment or processes that create noise, vibration, heat, smoke, dust, glare, fumes, or noxious odors. Relevant county regulations for this paragraph are those that apply to a residence where no business is conducted.
  - b. All business activities must comply with any relevant local, state, and federal regulations with respect to the use, storage, or disposal of any corrosive, combustible, or other hazardous or flammable materials or liquids. Relevant county regulations for this paragraph are those that apply to a residence where no business is conducted.

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(Supp. No. 104, Update 1)



# Exhibit D – Other Community Home-Based Business Regulations

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c. Use of the residential property for a home-based business must comply with all other applicable regulations for the zoning district.

(5) *Exception.* This section does not supersede, amend, or modify regulations, restrictions, or prohibitions related to transient public lodging establishments such as hotel/motels, bed and breakfasts, and short-term rentals, that are not otherwise preempted under F.S. ch. 509.

(Ord. No. 81-39, § XXXIX, 11-19-81; Ord. No. 84-1, §§ XLVI—XLIX, 3-8-84; Ord. No. 89-20, §§ XXI—XXV, 6-20-89; Ord. No. 90-34, § 53, 9-27-90; Ord. No. 95-17, § III, 6-15-95; Ord. No. 98-25, §§ XI—XVIII, 12-17-98; Ord. No. 02-10, § II, 4-18-02; Ord. No. 2007-13, § I, 4-19-07; Ord. No. 2008-25, § II, 12-4-08; Ord. No. 2021-34, § II(Exh. B), 12-14-21)

# Exhibit E – Ordinance 80-04

- (4) Automobiles, vans, pick-up trucks having a rated load capacity of one ton or less shall be exempted from this ordinance unless otherwise prohibited in Section 13A.

Add a new Paragraph 26 to read as follows:

## 26. Home Occupations

- (1) General Provisions for Home Occupations: In any residential district, a home occupation shall be allowed and it shall be conducted by an occupant thereof, and which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof; and provided that all the following conditions are met:
- A. There shall be no on-site or off-site premise advertising signs.
  - B. The use does not generate more traffic than would normally be experienced at a residence.
  - C. There shall be no receiving or storage of goods or materials other than normal delivery by U.S. Postal Service or similar carrier during daylight hours.
  - D. Parking or storage of commercial vehicles or equipment as prohibited by Paragraph 8 of this Section.
  - E. The on-premises use of any equipment or materials, by their nature, shall not create or produce excessive noise, obnoxious fumes, dust or smoke.
  - F. The on-premises use of any equipment or tools shall not create any amount of vibration or electrical disturbance.
  - G. No on-premises use or storage of any hazardous materials shall be kept in such an amount as to be potentially dangerous to persons or property outside the confines of the home occupation.
  - H. There shall be no retail sale of materials, goods or products from the premises.
  - I. There shall be no outside storage of goods or products (except plants).
- (2) Any home occupation that is found to have violated any provision of this section shall be discontinued upon receipt of notice from the Director. Failure to comply with said notice shall constitute a violation of this ordinance and for each day the use continues shall be considered a separate offense.
- (3) Home occupations existing prior to the effective date of this amendment and found not to comply with the provisions of this ordinance shall be deemed a violation and shall be either discontinued or shall meet the provisions imposed by this Section.

Add a New Paragraph 27 to read as follows:

## 27. Garbage Dumpsters

Garbage dumpsters shall be permitted in all districts subject to the following conditions:

- 1. All dumpsters must be screened from view of adjoining property owners or streets at first floor level.
  - 2. The following structures may be permitted as screening for dumpsters:
    - A. Wood fence.
    - B. CBS wall.
    - C. Vegetative screening in conjunction with A or B above.
  - 3. Dumpsters may be permitted within the building setback area provided there is no obstruction of vision of adjacent streets.
  - 4. Screening for dumpsters shall be exempted from height limitations for fences provided there is no obstruction of vision of adjacent streets.
- Industrial Zoned Districts shall not be subject to the screening provisions.

BOOK 010 PAGE 242

## Exhibit F – Ordinance 95-31

**ORIGIN:** Community Development - Code Enforcement

**AUTHOR:** Bob Mulhere, AICP; Manager  
Current Planning & Technical Services Manager

**DEPARTMENT:** Planning Services Department

**LDC SECTION:** Sec. 2.6.20 Home Occupations

**CHANGE:** Addition of language to further clarify restrictions relative to the prohibition of traffic generation associated with home occupations exceeding that which would normally be experienced at a residence. These restrictions currently exist and are being enforced. The intent is to further clarify what is and is not permitted in conjunction with a home occupation.

**REASON:** Code Enforcement personnel have continually experienced difficulties and problems with home occupations which generate excessive traffic to a residence and residential area, including the trafficking of employees, who are not residents, and customers to and from the residential structure and parking of employee and customer vehicles at the residence or in the neighborhood.

**FISCAL & OPERATIONAL IMPACTS:** Clarifying this language will facilitate more expeditious enforcement action, thus having a positive fiscal impact. This proposed change will have no operational impact.

**RELATED CODES OR REGULATIONS:** N/A

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Amend the LDC as follows :

2.6.20.1.2 The use does not generate more traffic than would normally be experienced at a residence. Traveling to and from the residence by employees of the business operated therefrom, who are not residing at the subject address, as well as by customers or clients of the home occupation, is prohibited. The utilization of a residence as a place where employees or customers of the business operated as a home occupation meet in preparation for travel to some other destination and any parking of vehicles associated with this activity is prohibited.

Words underlined are additions; Words ~~struck-through~~ are deletions.

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# Exhibit G – Ordinance 04-41

## CHAPTER 5 – SUPPLEMENTAL STANDARDS

### 5.01.00 GENERALLY

[Reserved]

### 5.02.00 HOME OCCUPATIONS

#### 5.02.01 Applicability

Home occupations shall be allowed in any zoning district which permits residential **DWELLINGS** as a permitted use.

#### 5.02.02 Allowable Home Occupation Uses

There shall be no retail sale of materials, goods, or products from the premises.

#### 5.02.03 Standards

The home occupation shall be clearly incidental to the use of the **DWELLING** for dwelling purposes. The existence of the home occupation shall not change the character of the **DWELLING**.

- A. An allowable home occupation shall be conducted by an occupant of the **DWELLING**.
- B. There shall be no on-site or off-site advertising signs.
- C. The use shall not generate more traffic than would be associated with the allowable residential use.
- D. There shall be no receiving of goods or materials other than normal delivery by the U.S. Postal Service or similar carrier.
- E. Parking or storage of commercial vehicles or equipment shall be allowable only in compliance with the requirements for commercial vehicles in the County Code.
- F. The on-site use of any equipment or materials shall not create or produce excessive noise, obnoxious fumes, dust, or smoke.
- G. The on-site use of any equipment or tools shall not create any amount of vibration or electrical disturbance.
- H. No on-site use or storage of any hazardous material shall be kept in such an amount as to be potentially dangerous to persons or property outside the confines of the home occupation.
- I. There shall be no outside storage of goods or products, except plants. Where plants are stored, no more than fifty (50) percent of the total square footage of the **LOT** may be used for plant storage.
- J. A home occupation shall be subject to all applicable County occupational licenses and other business taxes.

### 5.03.00 ACCESSORY USES AND STRUCTURES

#### 5.03.01 Canopy Tents and Shades

A. Canopy tents and shades shall be permitted in all areas zoned for residential and estates use, subject to the following standards.

1. The canopy tent shall meet the side and rear **SETBACKS** for the applicable zoning district.

# Exhibit H – Ordinance 05-27

Note: When a state permit is more restrictive than the Code requirements, the State requirements shall supersede, and the county shall enforce these requirements.

\* \* \* \* \*

## SUBSECTION 3. DD. AMENDMENTS TO SECTION 5.02.03 Standards [Home Occupations]

Section 5.02.03 Standards, of Ordinance 04-41, as amended, the Collier County Land Development Code is hereby amended to read as follows:

### 5.02.03 Standards

The home occupation shall be clearly incidental to the use of the **dwelling** for dwelling purposes. The existence of the home occupation shall not change the character of the **dwelling**.

- A. An allowable home occupation shall must be conducted by an occupant of the **dwelling**.
- B. There shall be no on-site or off-site advertising signs.
- C. The use shall not generate more traffic than would be associated with the allowable residential use. To that end, traveling to and from as well as meeting or parking at the residence by either employees of the business operated therefrom who are not residing at the subject address or by customers or clients of the home occupations is prohibited.

## SUBSECTION 3. EE. AMENDMENTS TO SECTION 5.03.02 Fences and Walls

Section 5.03.02 Fences and Walls, of Ordinance 04-41, as amended, the Collier County Land Development Code is hereby amended to read as follows:

### 5.03.02 Fences and Walls

#### A. All districts.

1. Whenever a property owner elects to ~~erect~~ construct a chain link fence, pursuant to the provisions herein, adjacent to an arterial or collector road in the urban coastal area, said fence shall not be located ~~nearer~~ closer than three (3) feet to the right-of-way or property line, and said fence shall be screened from view by planting a vegetative hedge of living plant material at a minimum of thirty (30) inches in height at planting and spaced at a distance apart that will achieve an opacity rating of eighty (80) percent sight-obscuring screen within one (1) year of planting. An irrigation system shall be installed to ensure the continued viability of the vegetative hedge as a visual screen of the chain link fence. This regulation shall not apply to single-family homes.

a. Structures subject to section 5.05.08 Architectural & Site Design Standards must comply with the following additional fencing standards:

l. Chain link and wood fences are prohibited forward of the primary facade and must be a minimum of 100 feet from a