

**TOWN OF LAKE PARK
TOWN COMMISSION
Public Hearing
Meeting Date: December 7, 2022**



STAFF REPORT

Ordinance

Background

In 2021 the Florida Legislature adopted legislation affecting a local government's ability to regulate home occupations. This is codified as FS section "559.955 Home-based businesses; local government restrictions". (See **Attachment A** for statute)

In summary, State law now prohibits local governments from regulating or restricting home-based businesses any different from other businesses in the local government's jurisdiction, except as provided in the legislation. The legislation does include certain performance standards for neighborhood compatibility.

Review of new ordinances adopted to address the legislation indicates that many communities are basically replacing their current language with that from the state statute itself. This includes West Palm Beach and Palm Beach Gardens. North Palm Beach has not yet amended its code.

The Town's ordinance, as proposed, would also basically utilize the state language, with minor additions to reflect Town ordinances. The current code section (Attachment C) would be repealed and replaced with the new text shown in **Attachment B**.

The ordinance also contains amendments to two zoning districts to replace the term "home occupation" with "home-based business" for consistency with state statute.

Analysis

Major Differences between current code and proposed language

The major differences between the Town's existing regulations and those mandated by the state are listed below.

Regulation Subject	Town's Current Code	Proposed Code (per State Statute)
Uses	No retail sales, specific uses listed as prohibited	No prohibition on uses. However residential character must be maintained.
Restriction on Employees	Must reside in home	Resident + up to two non-residents
Maximum area of residence to be used	10 %	No set limitation. However must be secondary to the residential use

Signage	None, unless required by state licensing law and maximum of 24 square inches	Per local code - Therefore, Town current restriction will carry forward.
	See attachment C for current Code	See attachment B for proposed code

Protections for the Neighborhood

While the State clearly opened the door to a number of new types of home businesses, the legislation did include some safeguards for residential neighborhoods. This statutory language is shown below in *blue italics*.

1. Residential Appearance

The following section of the statute can be broadly construed to protect residential neighborhood appearance, by requiring the following:

“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”

This statutory language, included in the Town’s proposed ordinance will serve as a major safeguard, insuring the continuing appearance of a residential neighborhood. In addition to retail transactions, the Town has added service transactions as well.

2. Parking

The Town’s ability to control the type of uses that are allowed depends to a large degree on parking. The legislation states, “... *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.*”

Existing Town ordinances relating to parking in driveways and requiring hard surfaces for parking will serve to prohibit customers from parking on the grass. However, unless prohibited by Town Code or quantified, on-street parking would be enforced by making a determination that the volume of vehicles was exceeding what “*would normally be expected at a similar residence where no business is conducted.*”

3. Trucks

The legislation states

“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 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.”

Therefore the Town will continue to enforce “Section 30-35 - Parking of commercial vehicles in residential districts” which dictates that:

“Commercial vehicles in residential districts— Parking conditions. Commercial vehicles, with the exception of one taxicab, or high-capacity passenger van or work van, or standard vehicle with equipment or commercial signage as defined herein, shall not be parked, stored or left on any street, right-of-way, swale or alley or on any private property in any residential districts, except that commercial vehicles may be parked or stored in an enclosed garage on private property in a residence district when completely screened from public view.”

4. Nuisances such as noise, odors etc.

The legislation allows the enforcement of local regulations in regards to noise, odors, etc. Sections 78-151 (C) 4. and 5. of the proposed code address this. (See attachment B.

Overall Impact on Town Neighborhoods

The above four sections in the statute provide the main tools to limit or prohibit certain uses that are not compatible with a residential neighborhood, and these have been included in the Town’s proposed ordinance.

With the limitation on parking many of the uses that the Town currently prohibits would continue to be prohibited based on the parking volume they generate. Included for example would be uses such as restaurants and grocery stores, and high volume retail.

Certain uses that are currently prohibited such as hair salons and barber shops could occur, with limited customers or appointment only. Retail uses such as a bakery or pick up orders deli might also occur.

The requirement that business must be within the residence will eliminate uses that would negatively impact a neighborhood.

The legislation does not supersede any current condominium declaration or any future declaration of condominium adopted pursuant to chapter 718.

While it is not anticipated that there will be a large volume of requests for the new types of uses that will be allowable, the possibility that some businesses will not adhere to all the regulations exists and may require greater vigilance for code enforcement.

While an impingement on home rule, the Town has no option but to comply with the State Statute. The proposed ordinance will accomplish that.

The Town currently requires home businesses to have a business tax receipt from the Town, and this will continue.

Legal Notice

Legal Notice was provided via a display ad in the Palm Beach Post, which ran October 28, in accordance with state statute and the Town code for ordinances that change permitted uses in zoning districts.

Planning and Zoning Board Recommendation

The Planning and Zoning Board held a Public Hearing on November 7 and voted unanimously to recommend approval of the ordinance to the Town Commission.

RECOMMENDED MOTION:

I RECOMMEND APPROVAL OF THE ORDINANCE ON FIRST READING.

Attachments:

- a. State Statute
- b. Proposed Amendments
- c.. Current Town Regulations

Attachment A - State Statute on Home-based Businesses

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 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.

Attachment B -Proposed Amendments to Town Code section 78-51

Sec. 78-151. – Home- based business

(a) Definition/ Intent

Home-based businesses are businesses that operate in whole or in part from an improved 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.

(b) 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.

(c) STANDARDS FOR HOME-BASED BUSINESSES

1. 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. The activities of the home-based business shall be secondary to the property's use as a residential dwelling. The home-based business may not conduct retail or service transactions at a structure other than the residential dwelling; however, incidental business uses and activities may be conducted at the residential property in accordance with this section.
3. 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 and there shall be no external evidence of activities of a home based business.

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 non-illuminated signage not to exceed 24 inches of total area affixed to the front of the resident's building

4. No substances or materials shall be stored or used except as they would, in such quantity, be normal and acceptable in a residential setting. 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.
5. 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 Town'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.
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.
7. 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. Commercial vehicles associated with a home based business shall only be permitted in conformance with requirements of "Section 30-35 - Parking of commercial vehicles in residential districts".
8. Town Business Tax Receipt Required: Prior to opening any home-based business, a Town Business Tax Receipt must be applied for and approved by the Community Development Department.

Attachment C - Current Code

Sec. 78-151. - Home occupations.

(a) *Definition, use limitations.* As used in this section, the term "home occupations" shall mean a business, profession, or trade conducted for gain or support entirely within a main residential building subject to the following use limitations:

- (1) No outside help shall be used for purpose of engaging in such home occupation.
- (2) No commodities except those incidental to said home occupation shall be sold or displayed on the premises.
- (3) No chemical, electrical or mechanical equipment shall be used except that which is normally used for purely domestic or household purposes.
- (4) No external evidence or sign that the dwelling is being used for the home occupation shall be allowed, except as required by state licensing law and no such sign shall exceed 24 square inches of the total area, nor shall said sign be illuminated, and said sign shall be affixed to the front of the resident's building.
- (5) The activity involved shall not noticeably detract from the outward residential character of the neighborhood.
- (6) There shall not be any type of public nuisance as a result of this minor business activity on the resident's property.
- (7) Any equipment shall be stored inside an enclosed shelter, shed or garage.
- (8) There shall be no vehicles over the size of a pickup truck or van parked at the residence.
- (9) No personal physical service shall be performed unless licensed by the state.
- (10) The area devoted to the home occupation shall not be the dominant use and in no case shall the area exceed ten percent of the total square footage of building area.
- (11) Audible evidence of the activity should not be present off the real property line before 9:00 a.m. or after 10:00 p.m.

(b) *Particular home occupations permitted:* Customary home occupations include, but are not limited to, the following list of occupations, provided, however, that each listed occupation is subject to the requirements of subsection (a) of this section:

- (1) Dressmakers, seamstresses, and tailors.
- (2) Music teachers and tutors, provided that instruction shall be limited to not more than five pupils at a time.

(3)Drama instructors, provided that instruction shall be limited to not more than five pupils at one time.

(4)Artists, sculptors, and authors or composers.

(5)Offices for architects, engineers, lawyers, real estate brokers, insurance agents, and stock brokers.

(6)Ministers, rabbis, and priests.

(7)Offices for sales representatives, when no exchange of tangible goods is made on the premises and where business is primarily conducted on telephone lines.

(8)Day care centers or babysitters caring for not more than five unrelated children.

(c)*Particular home occupations prohibited:* Permitted home occupations shall not in any event include the following:

(1)Funeral homes.

(2)Nursery schools, unless specifically permitted by the town regulations.

(3)Restaurants.

(4)Small grocery stores.

(5)Stables or kennels.

(6)Tourist homes, unless specifically permitted by the town regulations.

(7)Renting of trailers or equipment.

(8)Animal kennels or hospitals.

(9)Auto and other vehicle repair.

(10)Barbershops and beauty parlors.

(11)Services such as small appliance, radio and television repair.

(Ord. No. 14-1987, § 1, 9-16-1987; Ord. No. 26-1990, § 8, 10-31-1990; Code 1978, § 32-96)