

ORDINANCE NO. 2021- _____

AN ORDINANCE OF INDIAN RIVER COUNTY, FLORIDA, AMENDING SECTION 911.13 (SPECIAL DISTRICTS) OF CHAPTER 911 (ZONING) AND SECTION 912.05 (ALLOWABLE USES: LOCATIONS FOR SINGLE-FAMILY DEVELOPMENT AND USES ALLOWED IN SINGLE-FAMILY AREAS) AND SECTION 912.10 (CONSTRUCTION; BUILDING PERMIT REVIEW, APPROVAL, INSPECTION) OF CHAPTER 912 (SINGLE-FAMILY DEVELOPMENT) AND SECTION 956.16 (REGULATIONS FOR PERMANENT IDENTIFICATION SIGNS REQUIRING PERMITS) OF CHAPTER 956 (SIGN REGULATIONS) OF THE CODE OF INDIAN RIVER COUNTY IN ORDER TO EXEMPT THOSE HOME OCCUPATIONS EXEMPT PER STATE STATUTE; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, during the 2021 Legislative session, the Florida Legislature enacted HB 403, which preempts local governments from regulating certain types of homebased businesses; and

WHEREAS, HB 403 was signed by Governor DeSantis on June 29th and went into effect on July 1st; and

WHEREAS, the Code of Indian River County needs to be amended, in order to be consistent with HB 403,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT:

Section 1. Enactment Authority.

Article VIII, section 1 of the Florida Constitution and chapter 125, Florida Statutes vest broad home rule powers in counties to enact ordinances, not inconsistent with general or special law, for the purpose of protecting the public health, safety and welfare of the residents of the county. The Indian River County Board of County Commissioners specifically determines that the enactment of this ordinance is necessary to protect the health, safety and welfare of the residents of Indian River County.

Section 2. Amendment of Section 911.13 (Special Districts) of Chapter 911 (Zoning).

New language indicated by underline, and deleted language indicated by ~~strikethrough~~.

Section 911.13 (Special Districts) of Chapter 911 (Zoning) of the Code of Indian River County, Florida is hereby amended to read as follows:

CHAPTER 911- ZONING

Section 911.13.- Special Districts.

* * *

(3) ROSE-4: Roseland Residential District.

* * *

(d) Home occupations.

1. New home occupation uses. New home occupation uses are allowed subject to the requirements established in Chapter 912, Single-Family Development.

2. Existing nonconforming home businesses. Any nonconforming home business existing on January 19, 1988, which is not otherwise exempt per section 912.05 of the Code, shall be considered a vested nonconforming use, provided it meets the following criteria:

a. The owner shall submit information on a form acceptable to the county which verifies that the business has existed at its current location since February 24, 1982. Verification of existence shall be through presentation of one of the following or a combination of the following materials:

I. Originals or copies of occupational licenses issued by the Indian River County tax collector's office that the business has maintained an active occupational license at its current location since February 24, 1982;

II. Business records, including ledgers, invoices, sales receipts, and other evidence showing existence in that location since February 24, 1982;

III. Cancelled checks issued by the business at its current location dating back to February 24, 1982;

IV. Proof of exemption from local licensing and zoning regulations;

V. Evidence that the use has been granted a grandfathered status by Indian River County.

Once all information has been submitted, the community development department staff shall notify the applicant if additional information is required. Based on the information provided, the staff shall either approve or deny the grandfather request. Any individual denied grandfathering status by the staff may appeal the decision. All appeals shall be submitted in writing to the director of community development within fifteen (15) days of the denial. Appeals of this section shall be heard by the planning and zoning commission.

b. Verification of existence for businesses which qualify under this ordinance must be received by the Indian River County community development department within forty-five (45) days of the effective date of this chapter. All qualified businesses presenting verification shall be issued an Indian River County certificate of zoning approval demonstrating compliance with this chapter. Any qualified business which fails to comply with this ordinance shall be deemed an illegal use and be subject to all penalties under the Codes of Indian River County.

c. All businesses qualifying with and complying with this chapter shall continue operating under and be subject to the guidelines of Chapter 904, Nonconformities, and all other applicable codes and laws of Indian River County.

Section 3. Amendment of Sections 912.05 (Allowable uses; where single-family uses are allowed and other uses are allowed in single-family areas) and 912.10 (Construction; building permit review, approval, inspections) of Chapter 912 (Single-Family Development).

New language indicated by underline, and deleted language indicated by strikethrough.

Sections 912.05 (Allowable uses; where single-family uses are allowed and other uses are allowed in single-family areas) and 912.10 (Construction; building permit review, approval, inspections) of Chapter 912 (Single-Family Development) of the Code of Indian River County, Florida is hereby amended to read as follows:

CHAPTER 912- SINGLE-FAMILY DEVELOPMENT

* * *

Section 912.05. - Allowable uses: locations for single-family development and uses allowed in single-family areas.

* * *

(6) Home occupations.

(A) Authorizations. Home occupations are permitted in any dwelling unit subject to the following provisions:

(B) Authorized home occupations. Except as set forth in subsection (G) below, the ~~The~~ following home occupations shall be permitted uses, subject to the requirements of this section and the respective zoning district.

1. Artists and sculptors;
2. Authors and composers;
3. Dressmakers, seamstresses and tailors;
4. Computer programming;
5. Home crafts, such as model making, rug weaving, lapidary work, and ceramics;
6. Office facility of a minister, rabbi, priest or other similar person associated with a religious organization;
7. Office facility of a salesman, sales representative, or manufacturers representative, provided that no retail in person or wholesale transactions are made on the premises, and that no clients are attracted to the premises;
8. Telephone answering services;
9. The renting of not more than one room for rooming or boarding persons who are not transients;
10. Similar uses which do not involve in person retail or wholesale sales transactions on the premises, employment of persons on the premises other than occupants of the dwelling, and any mass production assembly, processing, or fabrication operations;
11. Child care service for five (5) or fewer children who are not related to the operator;
12. Realtors;
13. Licensed contractors.

(C) Non-authorized home occupations. Except as set forth in subsection (G) below, the ~~The~~ following are not permissible home occupations:

1. Automotive repair or paint shops;
2. Barber shops and beauty shops;

3. Child care centers for more than five (5) children who are not related to the operator;

4. Dog grooming services;

5. Food service establishments;

6. Funeral chapels, funeral homes;

7. Giftshops;

8. Massage parlors;

9. Nursing homes;

10. Medical or dental laboratories;

11. Outdoor repair;

12. Rental of any equipment or other items;

13. Restaurants;

14. Veterinary hospitals and clinics;

15. Similar uses not strictly in compliance with this section and the spirit and intent of the zoning ordinance and the Indian River County Comprehensive Plan.

(D) Use limitations. Except as set forth in subsection (G) below, in addition to the regulations applicable in the zoning district in which located, all home occupations shall be subject to the following limitations and requirements.

1. Location. A home occupation shall be conducted within a dwelling which is the bona fide residence of the principal practitioner or in any building accessory thereto which is normally associated with a residential use.

2. Merchandise. No stock in trade shall be displayed or sold on the premises.

3. Exterior alterations. No alterations to the exterior appearance of the principal residence or premises shall be made which change the character thereof as a residence.

4. Outdoor display or storage. No outside display of goods or outside storage of equipment or material used in the home occupation shall be permitted.

5. Employees. No persons other than an occupant of the dwelling shall be allowed to work on the premises. Non-resident employees may be

employed under the home occupation, but only for off-premise conduct of the home occupation. In such cases, no more than two (2) non-resident employees shall be allowed to park their vehicles or meet on the home occupation premises.

6. Level of activity. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and shall under no circumstances change the residential character thereof.

7. Parking. Parking generated by the conduct of such home occupation shall be met off the street.

8. Equipment processes. No equipment or process shall be used in such home occupations which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the premises. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises.

9. Signs. No signs accessory to such home occupation shall be displayed except as permitted or authorized by applicable county sign regulations.

10. Licenses, permits. A home occupation shall be subject to all applicable licenses and permits.

(E) Application and fees. Except as set forth in subsection (G) below, any Any person desiring to establish a home occupation, as authorized herein, shall submit an application for a home occupation permit to the planning division. The application shall be on a form provided by the planning division and shall include all information required for a complete application. All such applications shall also be accompanied by a fee, as established by the board of county commissioners. Applications shall be approved, approved with conditions, or denied by the community development director.

(F) Appeal of community development director decisions. The community development director's decision on a home occupation application may be appealed within ten (10) working days of the date the decision is rendered. Any appeal may be made by an applicant or affected party. Any valid appeal must be received in writing by the planning division within ten (10) working days of the director's decision. The appeal shall state what aspect of the decision is being appealed and the reasons for and justification for the appeal with specific reference to the regulations and requirements of this subsection. The appeal shall be heard by the planning and zoning commission. Decisions of the planning and zoning commission may be appealed to the board of county commissioners.

The appeal process is also defined in Chapter 902 of the land development regulations.

(G) A home occupation that operates from a residential property as provided below:

(a) May operate in an area zoned for residential use.

(b) Shall be subject to any prohibitions, restrictions, regulations, or license requirements as set forth for similar businesses under the County Land Development Regulations.

(c) Is subject to the applicable business taxes under chapter 205, Florida Statutes.

(d) A home occupation is otherwise exempt from the requirements of the County Land Development Regulations pertaining specifically to home occupations, if it operates, in whole or in part, from a residential property and meets the following criteria:

(i) The employees of the home occupation 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 home occupation. The home occupation may have additional remote employees that do not work at the residential dwelling.

(ii) Parking related to the business activities of the home occupation complies with the County Land Development Regulation requirements and the need for parking generated by the home occupation 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 home occupation 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.

(iii) 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 occupation must conform to the residential character and architectural aesthetics of the neighborhood. The home occupation 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.

(iv) The activities of the home occupation are secondary to the property's use as a residential dwelling.

(v) The business activities comply with the County Land Development Regulations or state regulations with respect to signage and equipment or processes that create noise, vibration, heat, smoke, dust, glare, fumes, or noxious odors.

(vi) 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.

* * *

Section 912.10. - Construction; building permit review, approval, inspection.

The building division reviews, approves, permits, and inspects regulated construction activities.

(1) Construction activities for which application approvals and/or permits are required include the following:

(a) Permits or approvals given over-the-counter (while you wait) include:

[1.] Driveway construction/uncovered slab permit;

[2.] Fence/wall permit;

[3.] Accessory structures permit;

[4.] Demolition permit;

[5.] Re-roofing permit;

[6.] Minor alteration permit;

[7.] Construction and subcontractor "trade" permits (electrical, plumbing, mechanical).

(b) Permits or approvals requiring more detailed review include:

[1.] Concurrency certificate;

[2.] Construction of single-family home (including alterations/additions);

[3.] Tree removal and land clearing permit;

[4.] Right-of-way permit;

[5.] Type "C" stormwater management permit;

[6.] Pond permit;

- [7.] Mangrove alteration permit;
- [8.] Temporary use permit;
- [9.] Home occupation permit, unless exempt per section 912.05;
- [10.] Release of easement;
- [11.] Covenant for removal of structure in easement;
- [12.] Drainage district permit (non-county);
- [13.] Well and septic tank permit (non-county);
- [14.] DNR construction seaward of CCCL (non-county).

* * *

Section 4. Amendment of Section 956.16 (Regulations for permanent identification signs requiring permits) of Chapter 956 (Sign Regulations).

New language indicated by underline, and deleted language indicated by strikethrough.

Section 956.16 (Regulations for permanent identification signs requiring permits) of Chapter 956 (Sign Regulations) of the Code of Indian River County, Florida is hereby amended to read as follows:

CHAPTER 956. – SIGN REGULATIONS

* * *

Section 956.16. - Regulations for permanent identification signs requiring permits.

The schedule of regulations for permanent signs requiring permits is stipulated in Table 1 which is located at the end of this chapter. The tabular schedule denoted in Table 1 identifies regulations governing the following sign characteristics: 1) maximum cumulative signage; 2) maximum signage on a single face; 3) maximum height; 4) required setbacks from the right-of-way and property lines; 5) number of allowable signs per street frontage. The following subsections describe supplemental regulations for managing permanent signs requiring permits, excepting that signs at a single-family residence or duplex shall not require a permit. The terms "residential zoning districts" and "nonresidential zoning districts" are defined in Chapter 901, Definitions.

(1) Identification signs for residential zoning districts.

(a) Single-family residence or duplex. A sign indicating only the name and/or address of the occupant or premises for each dwelling unit may be installed without a permit provided each sign has a maximum area not exceeding two (2) square feet, excluding mail-boxes, and shall not be higher than five (5) feet above the crown of the nearest road unless the sign is mounted flush against the wall of a building.

(b) Residential developments of three (3) units or more. Signs shall be restricted to one facade or freestanding sign per street frontage indicating the name and/or address of the premises, provided the signs comply with the criteria cited in Table 1 "Schedule of Regulations For Permanent Signs Requiring Permits." Each phase of a planned development shall be construed as a separate development.

(c) Subdivision entrance signs. One such sign may be permitted on each side of the principal entrance to a residential subdivision. All such signs shall satisfy Table 1 "Schedule of Regulations For Permanent Signs Requiring Permits." Each phase of a planned development shall be construed as a separate development.

(d) Identification signs for approved nonresidential uses within residential districts.

1. For approved uses other than residential uses, one permanent freestanding or facade identification sign per street frontage shall be permitted on any premises. This provision shall not be construed to include home occupation uses, unless such uses are exempt per section 912.05 of the Code. Such signs shall comply with Table 1 "Schedule of Regulations For Permanent Signs Requiring Permits."

2. Registered real estate brokers operating an office at their residences as a home occupation, who are not exempt under section 912.05 of the Code, may place an identifying sign containing letters not more than one inch high on the exterior of the building.

* * *

Section 5. Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 6. Severability. If any part of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall not be affected by such holding and shall remain in full force and effect.

Section 7. Codification. It is the intention of the Board of County Commissioners that the provision of this ordinance shall become and be made part of the Indian River County Code, and that the sections of this ordinance may be renumbered or re-lettered and the word ordinance may be changed to section, article or such other appropriate word or phrase in order to accomplish such intention.

Section 8. Effective Date. This ordinance shall become effective upon adoption by the Board of County Commissioners and filing with the Department of State.

This ordinance was advertised in the Indian River Press Journal on the 6th day of August, 2021, for a public hearing to be held on the 17th day of August, 2021, at which time it was

moved for adoption by Commissioner _____, seconded by
Commissioner _____, and adopted by the following vote:

Chairman, Joseph E. Flescher	_____
Vice-Chairman, Peter D. O'Bryan	_____
Commissioner Susan Adams	_____
Commissioner Joseph H. Earman	_____
Commissioner Laura Moss	_____

The Chairman thereupon declared the ordinance duly passed and adopted this ____ day
of _____, 2021.

**BOARD OF COUNTY
COMMISSIONERS OF INDIAN RIVER
COUNTY, FLORIDA**

By: _____
Joseph E. Flescher, Chairman

**ATTEST: Jeffrey R. Smith, Clerk
and Comptroller**

By: _____
Deputy Clerk

EFFECTIVE DATE: This Ordinance was filed with the Department of State on the ____
day of _____, 2021.