



Office of
**INDIAN RIVER COUNTY
ATTORNEY**

Dylan Reingold, County Attorney
William K. DeBral, Deputy County Attorney
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MEMORANDUM

TO: Board of County Commissioners
FROM: Dylan Reingold, County Attorney
DATE: July 16, 2021
SUBJECT: Home Occupation Preemption

During the 2021 Legislative session, the Florida Legislature enacted HB 403, which preempts local governments from regulating certain types of homebased businesses. HB 403 was signed by Governor DeSantis on June 29th and went into effect on July 1st.

Under HB 403, a home occupation is exempt from the County's Land Development Regulations if it 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.

HB 403 does allow local governments to regulate the parking or storage of heavy equipment at the business which is visible from the street or neighboring property. HB 403 defines "heavy equipment" as commercial, industrial, or agricultural vehicles, equipment, or machinery.

Thus, in order to comply with the new requirements, County staff has drafted the proposed ordinance, which codifies the preemption established per HB 403, but otherwise preserves the County's existing home occupation requirements for those home businesses that do not qualify for the exemption.

FUNDING.

The notice for the public hearing cost \$157.32 and will be paid out of MSTU Fund/County Planning/Legal Ads, Acct #00420515-034910

RECOMMENDATION.

The County Attorney recommends that the Chairman open the public hearing, take input from the public, and then close the public hearing, and that the Board then approve the proposed ordinance as presented or as amended.

ATTACHMENTS.

Proposed Ordinance