

ORDINANCE 2022 - ____**AN ORDINANCE OF THE FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS DELETING PROVISIONS OF THE LAND DEVELOPMENT CODE RELATED TO HOME OCCUPATIONS; CREATING A NEW SECTION 3.06.16, PROVIDING FOR THE REGULATION OF HOME-BASED BUSINESSES IN ACCORDANCE WITH STATE LAW; DELETING SPECIAL EXCEPTION REQUIREMENTS FOR HOME-BASED BUSINESSES; PROVIDING FOR CODIFICATION AND SCRIVENER'S ERRORS; AND PROVIDING AN EFFECTIVE DATE.**

Whereas, in February 1991, the Board of County Commissioners adopted Ordinance 91-2, codified at Appendix C of the Flagler County Code (the "Land Development Code"), establishing land development regulations within unincorporated Flagler County, specifically providing for zoning districts and standards at Article III; and

Whereas, the Land Development Code, allows home occupations as a permitted principal use of residential property within the AC agriculture, AC-2 agriculture forestry, R-1 rural residential, MH-1 rural mobile home, R-C residential commercial, and PUD planned unit development zoning districts; and

Whereas, in other residential zoning districts, the Land Development Code allows home occupations only as a special exception, requiring the homeowner to get approval from the Planning and Development Board, which board may impose conditions to safeguard the surrounding neighborhood from impacts of the home occupation; and

Whereas, through the enactment of Chapter 2021-202, Laws of Florida, codified at Section 559.995, Florida Statutes, the Legislature largely preempted the Land Development Code's requirements as it pertains to home occupations; and

Whereas, among other things, Section 559.995, Florida Statutes, prohibits the County from regulating home occupations in a manner that is different from businesses in commercially zoned districts, except as specifically authorized by the statute and also authorizes home occupation activities at any residential property regardless of its zoning designation; and

Whereas, the Board of County Commissioners wishes to amend the Land Development Code to provide for the regulation of home-based businesses consistent with State law in order to foster economic activity while protecting the residential character of neighborhoods; and

Whereas, public notice of the adoption of this ordinance has been provided in accordance with Section 125.66(4), Florida Statutes.

Now therefore, be it ordained by the Board of County Commissioners of Flagler County, Florida:

Section 1. Recitals. The above recitals are incorporated herein as findings of fact.

Section 2. Flagler County Code Amendment. Article III of Appendix C of the Code of Ordinances of Flagler County, Florida, is hereby amended and restated as follows (additions are shown in underline; deletions are shown in ~~strikethrough~~):

3.03.02. – AC—Agriculture district.

* * * *

B. *Permitted principal uses and structures.* In the AC₂-agriculture district, no premises shall be used except for the following uses and their customary accessory uses or structures:

* * * *

6. Home-based businesses ~~occupations~~ (subject to ~~special-exception~~ the regulations for home-based businesses ~~occupations~~ as outlined in subsection 3.06.163.07.03G).

* * * *

3.03.03. – AC-2—Agriculture/forestry district.

* * * *

B. *Permitted principal uses and structures.* In the AC-2, agriculture/forestry district, no premises shall be used except for the following uses and their customary accessory uses or structures:

* * * *

6. Home-based businesses ~~occupations~~ (subject to ~~special-exception~~ the regulations for home-based businesses ~~occupations~~ as outlined in subsection 3.06.163.07.03G).

* * * *

3.03.04. – R-1—Rural residential district.

* * * *

B. *Permitted principal uses and structures.* In the R-1₁ rural residential district, no premises shall be used except for the following uses and their customary accessory uses or structures:-

* * * *

4. Home-based businesses ~~occupations~~ (subject to ~~special-exception~~ the regulations for home-based businesses ~~occupations~~ as outlined in subsection ~~3.06.16~~3.07.03G).

* * * *

3.03.05. – R-1b—Urban single-family residential district.

* * * *

- B. *Permitted principal uses and structures.* In the R-1b, urban single-family residential district, no premises shall be used except for the following uses and their customary accessory uses or structures:

* * * *

5. Home-based businesses (subject to the regulations for home-based businesses as outlined in subsection 3.06.16).

- C. *Permitted special exceptions.*

* * * *

- ~~2. Home occupations (subject to special-exception guidelines for home occupations as outlined in subsection 3.07.03G “Special-exception regulations for home occupations”).~~

- 2.3. Common household pet animal sanctuary/shelter facilities.

* * * *

3.03.06. – R-1c—Urban single-family residential district.

* * * *

- B. *Permitted principal uses and structures.* In the R-1c, urban single-family residential district, no premises shall be used except for the following uses and their customary accessory uses or structures.

* * * *

5. Home-based businesses (subject to the regulations for home-based businesses as outlined in subsection 3.06.16).

- C. *Permitted special exceptions.*

* * * *

- ~~2. Home occupations (subject to special-exception guidelines for home occupations as outlined in subsection 3.07.03G “Special-exception regulations for home occupations”).~~

- 2.3. Common household pet animal sanctuary/shelter facilities.

* * * *

3.03.07. – R-1d—Urban single-family residential district.

* * * *

B. *Permitted principal uses and structures.* In the R-1d, urban single-family residential district, no premises shall be used except for the following uses and their customary accessory use or structures:

* * * *

5. Home-based businesses (subject to the regulations for home-based businesses as outlined in subsection 3.06.16).

* * * *

C. *Permitted special exceptions.*

~~2. Home occupations (subject to special exception guidelines for home occupations as outlined in subsection 3.07.03G “Special exception regulations for home occupations”).~~

~~3.2.~~ 2. Common household pet animal sanctuary/shelter facilities.

* * * *

3.03.08. – R-2—Two-family residential district.

* * * *

B. *Permitted principal uses and structures.* In the R-2, two-family residential district, no premises shall be used except for the following uses and their customary accessory use or structures:

* * * *

6. Home-based businesses (subject to the regulations for home-based businesses as outlined in subsection 3.06.16).

C. *Permitted special exceptions.*

* * * *

~~2. Home occupations (subject to special exception guidelines for home occupations as outlined in subsection 3.07.03G “Special exception regulations for home occupations”).~~

~~3.2.~~ 2. Common household pet animal sanctuary/shelter facilities.

* * * *

3.03.09.01. – R-3—Multifamily residential district.

* * * *

B. *Permitted principal uses and structures.* In the R-3, multifamily residential district, no premises shall be used except for the following uses and their customary accessory uses or structures:

* * * *

6. Home-based businesses (subject to the regulations for home-based businesses as outlined in subsection 3.06.16).

C. *Permitted special exceptions.*

* * * *

~~4. Home occupations (subject to special exception guidelines for home occupations as outlined in subsection 3.07.03G “Special exception regulations for home occupations”).~~

4.5. Community residential homes, seven (7) to fourteen (14) persons.

5.6. Common household pet animal sanctuary/shelter facilities.

* * * *

3.03.09.02. – R-3b—Multifamily residential district.

* * * *

B. *Permitted principal uses and structures.* In the R-3b, multifamily residential district, no premises shall be used except for the following uses and their customary uses or structures:

* * * *

6. Home-based businesses (subject to the regulations for home-based businesses as outlined in subsection 3.06.16).

C. *Permitted special exceptions.*

~~4. Home occupations (subject to special exception guidelines for home occupations as outlined in subsection 3.07.03G “Special exception regulations for home occupations”).~~

5.4. Community residential homes, seven (7) to fourteen (14) persons.

6.5. Common household pet animal sanctuary/shelter facilities.

* * * *

3.03.10. – MH-1—Rural mobile home district.

* * * *

B. *Permitted principal uses and structures.* In the MH-1, rural mobile home district, no premises shall be used except for the following uses and their customary accessory uses or structures:

* * * *

4. Home-based businesses ~~occupations~~ (subject to ~~special-exception~~ the regulations for home-based businesses ~~occupations~~ as outlined in subsection ~~3.06.16~~3.07.03G).

* * * *

3.03.11. – MH-2—Urban mobile home district.

* * * *

B. *Permitted principal uses and structures.* In the MH-2, urban mobile home district, no premises shall be used except for the following uses and their customary accessory uses or structures:

* * * *

4. Home-based businesses (subject to the regulations for home-based businesses as outlined in subsection 3.06.16).

C. *Permitted special exceptions.* None.

~~1. Home occupations (subject to special-exception guidelines for home occupations as outlined in subsection 3.07.03G “Special-exception regulations for home occupations”).~~

* * * *

3.03.12. – MH-3—Mobile home park district.

* * * *

B. *Permitted principal uses and structures.* In the MH-3, mobile home park district, no premises shall be used except for the following uses and their customary accessory uses or structures:

* * * *

4. Home-based businesses (subject to the regulations for home-based businesses as outlined in subsection 3.06.16).

C. *Permitted special exceptions.*

~~1. Home occupations (subject to special exception guidelines for home occupations as outlined in subsection 3.07.03G “Special exception regulations for home occupations”).~~

~~2.1.~~ Permanent commercial campgrounds.

~~3.2.~~ Manager/caretaker single-family dwelling (dwelling must meet the minimum dimensional requirements of the MH-3 mobile home park district).

* * * *

3.03.13. – R/C—Residential/limited commercial use district.

* * * *

B. *Uses permitted by right.* No building or structure, or part thereof, shall be erected, altered or used, or land or water used, in whole or in part, for other than one or more of the following use(s):

* * * *

3. Home-based businesses ~~occupations~~ (subject to ~~those guidelines the regulations for home-based businesses~~ ~~occupations~~ in subsection ~~3.06.163.07.03G~~”).

* * * *

3.03.20. – PUD—Planned unit development.

* * * *

B. *Permitted principal uses and structures.* In the PUD, planned unit development district, no premises shall be used except for the following uses and their customary accessory uses or structures, ~~after compliance with section 3.04.00 of this article:~~

* * * *

18. Home occupations (subject to ~~special exception~~ the regulations for home occupations as outlined in subsection ~~3.06.163.07.03G~~”).

* * * *

3.03.20.2. – MUL-PUD—Mixed use, low intensity—Planned unit development.

* * * *

B. *Permitted principal uses and structures.* In the MUL-PUD, mixed use low intensity planned unit development, no premises shall be used except for the following uses and their customary accessory uses or structures:

* * * *

17. Home-based businesses subject to the regulations for home-based businesses as outlined in subsection 3.06.16.

* * * *

3.03.20.3. – MUH-PUD—Mixed use, high intensity—Planned unit development.

* * * *

B. *Permitted principal uses and structures.* In the MUH-PUD, mixed use high intensity planned unit development, no premises shall be used except for the following uses and their customary accessory uses or structures:

* * * *

18. Home-based businesses subject to the regulations for home-based businesses as outlined in subsection 3.06.16.

* * * *

3.06.16 Home-based business regulations.

A. A home-based business shall be allowed as an accessory use from a residential property in all zoning districts that allow residential uses, subject to the following requirements:

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 residential property. The business may have additional remote employees that do not work at the residential unit.
2. Parking related to the business activities of the home-based business shall comply with all requirements of the Land Development Code. 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.

3. The activities of the home-based business shall be secondary to the property's use as a residential dwelling. As viewed from the street, the use of the residential property must be consistent with the uses of the residential areas that surround the property. External modifications made to the residential dwelling or accessory structure to accommodate a home-based business shall 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.
4. The business activities shall 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.
5. All business activities shall 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.

B. The application of this section does not supersede:

1. Any current or future declaration or declaration of condominium adopted pursuant to Chapter 718, Florida Statutes, cooperative document adopted pursuant to Chapter 719, Florida Statutes, or declaration or declaration of covenant adopted pursuant to Chapter 720, Florida Statutes, or their successors.
2. Any county ordinance related to transient public lodging establishments, as defined in Section 509.013(4)(a)1., Florida Statutes, or its successor.

* * * *

3.07.03. – Procedure for variances and special exceptions.

* * * *

~~G. Special exception regulations for home occupations:~~

- ~~1. The applicant must demonstrate to the planning board clear evidence that the proposed home occupation will not:~~
 - ~~(a) Disturb the peace, quiet and domestic tranquility of the residential neighborhood;~~

- ~~(b) Create excessive odor, noise, parking or traffic above that of the residential neighborhood;~~
 - ~~(c) Create a fire hazard or nuisance;~~
 - ~~(d) Use or generate toxic or hazardous materials or waste.~~
2. ~~Special exceptions and permitted uses for home occupations are subject to the following regulations:~~
- ~~(a) No more than one home occupation shall be permitted within any single dwelling unit (excluding cases where a person requires multiple professional or vocational licenses and the actual performance or work occurs somewhere other than the applicant's dwelling unit).~~
 - ~~(b) Permitted home occupations shall not include the employment of any persons not residing on the premises in the performance of the occupation.~~
 - ~~(c) No one other than residents of the dwelling shall be employed in the conduct of a home occupation (excluding those cases where actual performance of work occurs somewhere other than the applicant's dwelling unit).~~
 - ~~(d) No stock-in-trade shall be displayed or maintained on the premises, and no retail sales on the premises shall occur.~~
 - ~~(e) A home occupation shall produce no noise or obnoxious odors, vibrations, glare, fumes or electrical interference detectable to normal sensory perception.~~
 - ~~(f) No traffic or parking shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood.~~
 - ~~(g) There shall be no exterior indication of the home occupation; no exterior signs shall be used; no other onsite advertising visible from the exterior shall be used that informs the public of the address of the home occupation.~~
 - ~~(h) No mechanical equipment shall be used or stored on the premises in connection with the home occupation except that which is normally used for purely domestic or household purposes or as specifically provided for in a special exception permit.~~
3. ~~All special exceptions for home occupation land uses are subject to review and a rehearing of the approved special exception by the planning board upon written and justifiable complaints from surrounding property owners. Such rehearing may result in the revoking of the special exception or additional conditions for continued operation of a home occupation.~~

~~4. Home occupation uses shall be subject to all applicable county occupational licenses and other business taxes.~~

~~5. In the event that the applicant has not had an occupational license in effect for the duration of time that the applicant has been operating the business out of the home, as a condition of any special exception the applicant shall be required to pay all occupational license fees that could have been due plus the maximum statutory penalties and fees as prescribed by state and local law.~~

H.G. *Special exception regulations for common household pet animal sanctuary/shelter facilities.*

* * * *

3.08.02. – Specific definitions of certain terms used in this article.

* * * *

Home occupation: A use to be approved as a permitted use ~~or special exception~~ and any onsite business conducted in whole or in part from a residential property ~~entirely within a dwelling and carried on by residents thereof~~. Such use is to be clearly incidental and secondary to the residential uses and ~~shall not change the residential character of the dwelling~~, and further provide that the use can meet the ~~special exception~~ home-based business regulations, as outlined in subsection 3.06.16 ~~“Home-based business regulations”~~ 3.07.03G ~~“Special exception regulations for home occupations”~~.

* * * *

Section 3. Codification and Scrivener’s Errors.

- A. The provisions of this Ordinance shall be included and incorporated into the Code of Ordinances of Flagler County, Florida, as additions and amendments thereto, and shall be appropriately renumbered or re-lettered to conform to the uniform numbering system of the Code. Scrivener's errors may be corrected as deemed necessary.
- B. Only Section 2 herein shall be codified within the Code of Ordinances of Flagler County, Florida. Sections not specifically amended herein shall remain unchanged by this Ordinance.

Section 4. Effective Date. This ordinance shall take effect upon filing with the Secretary of State as provided in Section 125.66, Florida Statutes.

Adopted this ____ day of _____ 2022.

**Flagler County Board of County
Commissioners**

Attest:

Tom Bexley, Clerk of the Circuit
Court and Comptroller

Joseph F. Mullins, Chair

Approved as to Form:

Sean S. Moylan, Assistant County Attorney

Select Year:

The 2021 Florida Statutes

[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

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.

Govt Public Notices

Originally published at news-journalonline.com on 06/10/2022

PUBLIC NOTICE

You are hereby notified of two Public Hearings to be held June 20, 2022 at 5:30 p.m., or as soon thereafter as possible, and July 11, 2022 at 9:30 a.m., or as soon thereafter as possible, to consider the reading and adoption of an ordinance titled similar to:

AN ORDINANCE OF THE FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS DELETING PROVISIONS OF THE LAND DEVELOPMENT CODE RELATED TO HOME OCCUPATIONS; CREATING A NEW SECTION 3.06.16, PROVIDING FOR THE REGULATION OF HOME-BASED BUSINESSES IN ACCORDANCE WITH STATE LAW; DELETING SPECIAL EXCEPTION REQUIREMENTS FOR HOME-BASED BUSINESSES; PROVIDING FOR CODIFICATION AND SCRIVENER'S ERRORS; AND PROVIDING AN EFFECTIVE DATE.

This meeting will be held at the Flagler County Government Services Building located at 1769 E. Moody Blvd., Building 2, Bunnell, Florida, in the Board Chambers.

All interested persons are urged to attend the public hearing and be heard. Anyone wishing to express their opinion may attend, telephone 386-313-4001 or write to: Flagler County Administration, 1769 E. Moody Blvd, Building 2, Bunnell, FL 32110 or email to publiccomments@flaglercount

y.gov. Copies of the proposal and other pertinent information are available for review at Flagler County Administration, 1769 East Moody Boulevard, Building 2, Bunnell, Florida 32110.

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD OF COUNTY COMMISSIONERS WITH RESPECT TO ANY MATTER CONSIDERED AT THE MEETING, A RECORD OF THE PROCEEDINGS MAY BE NEEDED AND, FOR SUCH PURPOSES, THE PERSON WILL NEED TO ENSURE THAT A VERBATIM RECORD IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH APPEAL IS TO BE BASED.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT, PERSONS NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT COUNTY ADMINISTRATION AT LEAST 48 HOURS PRIOR TO THE MEETING.

L#7392646 6/10/2022 1T