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**ORDINANCE NO. 2021-02**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF WINDERMERE, FLORIDA; AMENDING SECTIONS 1.03.02 AND 7.03.01 OF THE TOWN'S LAND DEVELOPMENT CODE AND SECTION 8-19 OF THE TOWN'S LAND DEVELOPMENT CODE REGARDING HOME OCCUPATIONS TO BE CONSISTENT WITH THE NEW GENERAL LAW ON HOME-BASED BUSINESSES; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.**

**BE IT ENACTED BY THE PEOPLE OF THE TOWN OF WINDERMERE:**

**Section 1. Legislative Findings.**

- 14 (a) The Town of Windermere regulates home occupations, otherwise known as home-based  
15 businesses.  
16 (b) The Florida Legislature recently enacted Chapter 2021-202, Laws of Florida, codified in  
17 section 559.955 of the Florida Statutes to prohibit local governments from regulating  
18 home-based businesses in a manner inconsistent with the statute.  
19 (c) This ordinance resolves the inconsistencies between the Town's Land Development Code  
20 and the statute.

21 **Section 2. Amendments to the Town's Land Development Code.** Section 7.03.01 of the  
22 Town's Land Development Code titled "Home occupations" is amended as follows (words that  
23 are underlined are additions; words that are ~~stricken~~ are deletions):

24 **DIVISION 7.03.00. - ACCESSORY USES**

25 **Sec. 7.03.01. – Home-based businesses ~~occupations~~.**

- 26  
27 (1) For purposes of this section, a business is considered a home-based business if it  
28 operates, in whole or in part, from a residential property and meets the following criteria:  
29  
30 (a) The employees of the business who work at the residential dwelling must also  
31 reside in the residential dwelling, except that up to a total of two employees or  
32 independent contractors who do not reside at the residential dwelling may work at  
33 the home-based business. The business may have additional remote employees  
34 that do not work at the residential dwelling.  
35  
36 (b) Parking related to the home-based business activities of the home-based business  
37 complies with the zoning requirements applicable to other residential properties  
38 within the same zoning classification and the need for parking generated by the  
39 home-based business may not be greater in volume than would normally be  
40 expected at a similar residence where no business is conducted. The use of  
41 vehicles or trailers operated or parked at the home-based business or on a street  
42 right-of-way, must comply with the regulations applicable to a residence where  
43 the home-based business is conducted. Vehicles and trailers used in connection  
44 with the home-based business must be parked in legal parking spaces that are not

45 located within the right-of-way, on or over a sidewalk, or on any unimproved  
46 surfaces at the residence.

47  
48 (c) No “heavy equipment,” defined for purposes of this section as commercial,  
49 industrial, or agricultural vehicles, equipment, or machinery, may be parked or  
50 stored such that it is visible from the street or neighboring property.

51  
52 (d) As viewed from the street, the use of the residential property must be consistent  
53 with the uses of the residential areas that surround the property. External  
54 modifications made to a residential dwelling to accommodate a home-based  
55 business must conform to the residential character and architectural aesthetics of  
56 the neighborhood.

57  
58 (e) The home-based business may not conduct retail transactions at a structure other  
59 than the residential dwelling; however, incidental business uses and activities may  
60 be conducted at the residential property.

61  
62 (f) The activities of the home-based business must be secondary to the property’s use  
63 as a residential dwelling.

64  
65 (g) The business activities at the home-based business must comply with any relevant  
66 local or state regulations with respect to signage and equipment or processes that  
67 create noise, vibration, heat, smoke, dust, glare, fumes, or noxious odors as such  
68 as such regulations apply to a residence in the town where no home-based  
69 business is conducted.

70  
71 (h) The business activities at the home-based business must comply any relevant  
72 local, state, and federal regulations with respect to the use, storage, or disposal of  
73 any corrosive, combustible, or other hazardous or flammable materials or liquids  
74 as such regulations apply to a residence in the town where no home-based  
75 business is conducted.

76  
77 (2) A person or entity operating a home-based business in a manner inconsistent with this  
78 section is in violation of the town’s code, and the town may enforce these provisions by  
79 any legal means available or as otherwise directed by general law, including but not  
80 limited to code enforcement proceedings, civil citations, or a legal action to enjoin a  
81 violation of this section.

82  
83 (3) The home-based business is subject to applicable business taxes. Nothing herein is  
84 deemed to excuse or exempt the owner or operator of a home-based business from  
85 complying with any federal or state occupational or licensure requirements.

86  
87 (4) It is the intent that this section be interpreted in harmony with general law pertaining to  
88 home-based businesses, and in the event of a conflict, general law will govern and control  
89 the interpretation and application of this section.

90 A home occupation shall be allowed in a bona fide dwelling unit, subject to the following  
91 requirements:

- 92 (1) — No person other than members of the family residing on the premises shall be  
93 engaged in such occupation.
- 94 (2) — The use of the dwelling unit for the home occupation shall be clearly incidental  
95 and subordinate to its use for residential purposes by its occupants, and shall  
96 under no circumstances change the residential character of the structure. It shall  
97 include any business, profession or gainful employment of any sort whatever,  
98 which is conducted from a home or residential area, whether inside or outside a  
99 dwelling or other building situated thereon.
- 100 (3) — There shall be no change in the outside appearance of the building or premises, or  
101 other visible evidence of the conduct of such home occupation.
- 102 (4) — No home occupation shall occupy more than 20 percent of the first floor area of  
103 the residence. No accessory building, freestanding or attached, shall be used for a  
104 home occupation.
- 105 (5) — No traffic shall be generated by such occupation in greater volumes than would  
106 normally be expected in a residential neighborhood, and any need for parking  
107 generated by the conduct of such home occupation shall be met off the street and  
108 not in any yard required pursuant to this Land Development Code.
- 109 (6) — No equipment, tools or process shall be used in such a home occupation which  
110 creates interference to neighboring properties due to noise, vibration, glare,  
111 fumes, odors or electrical interference. In the case of electrical interference, no  
112 equipment or process shall be used which creates visual or audible interference in  
113 any radio, telephone or television receivers off the premises or causes fluctuations  
114 in line voltage off the premises.
- 115 (7) — Outdoor storage of materials shall not be permitted.
- 116 (8) — A home occupation shall be subject to all applicable town and county  
117 occupational licensing requirements, fees and other business taxes.
- 118 (9) — No advertising shall be permitted using a residential address.
- 119 (10) — Home occupations such as television repair, building contractors, lawn care, etc.,  
120 shall be on a called-out basis only.
- 121 (11) — Anyone proposing to engage in a home occupation shall make application to the  
122 town clerk and pay a filing fee which shall be established by resolution of the  
123 town council and on file in the town clerk's office, plus all necessary postage costs  
124 for mailing notification to property owners as hereinafter provided. The town  
125 clerk shall, upon receipt of said application, notify, by certified mail, all property  
126 owners within 500 feet of the proposed location of such home occupation,  
127 requiring said owners to notify the town clerk of their approval or disapproval  
128 within 15 days of receipt of such notice. After the expiration of 15 days, the  
129 application shall be approved or disapproved by the town manager. If the  
130 applicant or any of the property owners within 500 feet disapprove of the town  
131 manager's decision regarding such application, they may request in writing a  
132 public hearing before the town council. At said public hearing, the town council  
133 shall make a determination with regard to said application. The town council shall  
134 be the sole judges of the sufficiency and validity of any application and/or protest  
135 for any home occupation.

136 (12) ~~Business tax receipts will be issued for one year only and shall be reviewed at the~~  
137 ~~time of renewal by the town council before January 1 of each year.~~

138 (13) ~~The town, acting through its town council, shall have the right and authority to~~  
139 ~~revoke any business tax receipts granted under this section for noncompliance~~  
140 ~~with the provisions of this Land Development Code.~~

141 **Section 3. Amendments to the Town's Land Development Code.** Article VII of Section  
142 1.03.02 of the Town's Land Development Code is amended as follows (words that are  
143 underlined are additions; words that are ~~stricken~~ are deletions):

144 **1.03.02 Checklist for preparation and review of development proposals.** Every  
145 attempt has been made to make this Land Development Code as easy as possible for  
146 interested citizens, developers and local government staff to use. The articles are arranged  
147 in an order that reflects the process by which a developer would start with a parcel of  
148 land and conclude with an approved development. This same ordering provides a  
149 checklist approach for interested citizens and staff who are reviewing a proposed  
150 development for compliance with code requirements. The ordering and checklist are as  
151 follows:

152 \* \* \*

153  
154  
155 **ARTICLE VII. ACCESSORY STRUCTURES AND USES**

156  
157 Article VII creates the standards for the creation, placement and construction of  
158 accessory structures or uses. The following is a checklist of provisions that should be  
159 consulted with regard to a development proposal:

160  
161 Are pool and air conditioner accessory structures to be in a yard? See section 7.02.08.

162  
163 Is a satellite dish antenna to be installed? See section 7.02.01.

164  
165 Is a storage building, utility building, or greenhouse to be installed? See section 7.02.02.

166  
167 Is a swimming pool, hot tub or similar structure to be installed? See section 7.02.03.

168  
169 Is a fence to be installed? See section 7.02.04.

170  
171 Is a boathouse or dock to be installed? See section 7.02.05.

172  
173 Is an accessory apartment to be created? See section 7.02.07.

174  
175 Is a playset or sport court to be created? See section 7.02.09.

176  
177 Is a home-based business ~~occupation~~ to be started? See section 7.03.01.

178

179 **Section 4. Amendments to the Town's Code of Ordinances.** Section 8-19 of the Town's  
180 Code of Ordinances is amended as follows (words that are underlined are additions; words that  
181 are ~~stricken~~ are deletions):

182 **Sec. 8-19. - Applicability of article; disputes as to classification.**

- 183 (a) This article shall be known as the "Local Business Tax Act."  
184 (b) For the purpose of this article, any business, concern, or person represented to the  
185 public, at a specific location, by sign, printed matter, classified section, telephone  
186 directory or town directory, ~~holding a home occupation permit~~ operating a home-  
187 based business, or otherwise as being engaged in business or as offering services or  
188 property to the public, regardless of whether such business, concern or person  
189 actually transacts any business or practices a profession, shall be considered as  
190 engaging in business and shall be liable for a local business tax receipt therefor.  
191 (c) In the event of a disagreement between an applicant and the town on the question of  
192 proper classification for any business, occupation or profession for local business tax  
193 purposes, the town manager shall decide the proper classification, after payment of  
194 the higher fee in question, with the right in the applicant to appeal from such decision  
195 to the town council, whose decision upon the point shall be final.  
196

197 **Section 5. Codification.** Sections 2, 3 and 4 of this Ordinance shall be codified and made part  
198 of the Town of Windermere Code of Ordinances.

199 **Section 6. Conflicts.** In the event of a conflict or conflicts between this ordinance and other  
200 ordinances, this ordinance controls to the extent of the conflict.

201 **Section 7. Severability.** The provisions of this Ordinance are declared to be separable and if  
202 any section, paragraph, sentence or word of this Ordinance or the application thereto any person  
203 or circumstance is held invalid, that invalidity shall not affect other sections or words or  
204 applications of this Ordinance. If any part of this Ordinance is found to be preempted or  
205 otherwise superseded, the remainder shall nevertheless be given full force and effect to the extent  
206 permitted by the severance of such preempted or superseded part.

207 **Section 8. Effective Date.** This Ordinance shall become effective upon adoption at its second  
208 reading.

209 **ENACTED** this 12<sup>th</sup> day of October, 2021, at a regular meeting of the Town  
210 Council of the Town of Windermere, Florida.

211  
212  
213 Town of Windermere, Florida  
214 by: Town Council

215  
216  
217 by:   
218 Jim O'Brien, Mayor  
219

220 Attest:



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Dorothy Burkhalter, MMC, FCRM  
Town Clerk

First reading: September 14, 2021  
Second reading: *October 12, 2021*  
Advertised: *September 30, 2021*

Serial Number  
21-03583W

# WEST ORANGE Times

West Orange Times  
Published Weekly  
Winter Garden, Orange County, Florida

COUNTY OF ORANGE

STATE OF FLORIDA



Before the undersigned authority personally appeared Lindsey Padgett who on oath says that he/she is Publisher's Representative of the West Orange Times a weekly newspaper published at Winter Garden, Orange County, Florida; that the attached copy of advertisement,

being a Notice of Public Hearing

in the matter of Public Hearing on October 12, 2021  
Ordinance No. 2021-02

in the Court, was published in said newspaper in the issues of 9/30/2021

Affiant further says that the said West Orange Times is a newspaper published at Winter Garden, Orange County, Florida, and that said newspaper has heretofore been continuously published and has been entered as periodicals matter at the Post Office in Winter Garden in said Orange County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he/she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in said newspaper.

\*This Notice was placed on the newspaper's website and floridapublicnotices.com on the same day the notice appeared in the newspaper.

Lindsey Padgett

Sworn to and subscribed, and personally appeared by physical presence before me,

30th day of September, 2021 A.D.

by Lindsey Padgett who is personally known to me.

Notary Public, State of Florida  
(SEAL)



Kimberly S. Martin  
COMMISSION # GG232793  
EXPIRES: July 25, 2022  
Bonded Thru Aaron Notary

**NOTICE OF PUBLIC HEARING TO ADOPT ORDINANCE 2021-02**  
The Town of Windermere, Florida, proposes to adopt Ordinance 2021-02. The Town Council of Windermere, Florida, will hold a public hearing at the Town Hall located at 520 Main Street, Windermere, Florida, on Tuesday, October 12, 2021 at 6:00 P.M. (or as soon thereafter as the matter may be considered) to hold a public hearing on and to consider passage of the proposed Ordinance 2021-02, the title of which reads as follows:

**ORDINANCE NO. 2021-02**  
AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF WINDERMERE, FLORIDA; AMENDING SECTIONS 1.03.02 AND 7.03.01 OF THE TOWN'S LAND DEVELOPMENT CODE AND SECTION 8-19 OF THE TOWN'S LAND DEVELOPMENT CODE REGARDING HOME OCCUPATIONS TO BE CONSISTENT WITH THE NEW GENERAL LAW ON HOME-BASED BUSINESSES; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

Interested parties may appear at the meeting and be heard with respect to the proposed annexation.

This ordinance is available at the Town Clerk's Office, 501 Forest Street, Windermere, Florida, for inspection. Due to Covid-19, in person appointments are required. Please contact Dorothy Burkhalter, Town Clerk, Town of Windermere, at 407-876-2563, ext. 23 for an appointment or if there are any questions/concerns.

Persons with disabilities needing assistance to participate in this proceeding should contact the Town Clerk at least 48 hours before the meeting.

Persons are advised, pursuant to Section 286.0105 of the Florida Statutes, that, if they decide to appeal any decision made by the Town Council at this public hearing, they may need to ensure that a verbatim record of the proceeding is made, which record should include testimony and evidence upon which an appeal is based.  
September 30, 2021 21-03583W

## 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



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.

Heather M. Ramos  
407-244-5670

HEATHER.RAMOS@GRAY-ROBINSON.COM

## MEMORANDUM

**TO:** Dorothy Burkhalter, Town Clerk  
**FROM:** Heather Ramos, Gray Robinson, P.A.  
**DATE:** August 19, 2021  
**SUBJECT:** New 2021 Laws on Homed-Based Businesses and Prohibition on Licensing of Occupations

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This memorandum provides a summary of the new laws concerning home-based businesses codified in Section 559.955 of the Florida Statutes, and the prohibition on licensing of occupations codified in Section 163.211 of the Florida Statutes.

*Summary of the home-based business law --* The law provides that the Town may not enact or enforce any ordinance, regulation, or policy, or take any action to license or otherwise regulate a home-based business that operates from a residential property in a manner that is different from other businesses in the Town.

To be considered a home-based business under the new law:

- The business must operate, 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. The business may have additional remote employees that do not work at the business.
- Parking related to business must comply with local zoning requirements and the need for parking generated 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.
- Activities of the home-based business are secondary to the use as a residential dwelling.

A few other important points on the new law:

Dorothy Burkhalter, Town Clerk

August 19, 2021

Page 2

- The home-based business is subject to the applicable business taxes in the county and municipality where the home-based business is located.
- The law provides for prevailing party attorney's fees in the event an adversely affected current or prospective home-based business owner challenges any local government action regulating home-based businesses.
- Local governments may regulate the use of vehicles or trailers operated or parked at the home-based 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 (commercial, industrial, or agricultural vehicles, equipment, or machinery) at the business which is visible from the street or neighboring property.
- 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.
- The law was effective on July 1, 2021.

\* \* \*

***Summary of the prohibition on licensing of occupations*** – The new law expressly preempts the licensing of occupations to the state and supersedes any local government licensing of occupations. Any local government licensing of occupations adopted prior to July 1, 2021 are effective until July 1, 2023, at which time it will expire. Licensing by local governments of occupations authorized by Florida law may continue and is exempt from the preemption.

The new law specifically prohibits local governments from requiring a license for a person whose job scope does not substantially correspond to that of a contractor or journeyman licensed by the Construction Industry Licensing Board, and specifically precludes local governments from requiring a license for painting, flooring, cabinetry, interior remodeling, handyman services, driveway or tennis court installation, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, canvas awning installation, and ornamental iron installation.

The law also expressly authorizes counties and municipalities to issue journeyman licenses in the plumbing, pipe fitting, mechanical and HVAC trades, as well as, the electrical and alarm system trades.

This law does not affect the issuance and application of business tax receipts.