

ORDINANCE NO. 21-10

AN ORDINANCE OF THE CITY OF BELLE ISLE, FLORIDA; AMENDING SECTION 50-103(a) OF THE CITY'S CODE OF ORDINANCES AS SUCH PERTAINS TO HOME BASED OCCUPATIONS; PROVIDING FOR HOME BASED BUSINESS REGULATIONS CONSISTENT WITH GENERAL LAW; AND PROVIDING FOR ENFORCEMENT, SEVERABILITY, CONFLICTS, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City has historically regulated home occupations, otherwise known as home-based businesses;

WHEREAS, the Florida Legislature recently enacted Chapter 2021-202, Laws of Florida, codified as § 559.955, Florida Statutes, with an effective date of July 1, 2021;

WHEREAS, new § 559.955, Florida Statutes, prohibits local governments, including the City from regulating home-based businesses in any manner inconsistent with the terms of such statute; and

WHEREAS, the City's current ordinance regulating home occupations is inconsistent with the mandates contained in newly enacted § 559.955, Florida Statutes, regarding home-based businesses, and the City desires to amend such ordinance to conform to § 559.955, Florida Statutes.

NOW, THEREFORE, be it ordained by the City Council of the City of Belle Isle, Florida, as follows:

**SECTION 1. Recitals.** The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance.

**SECTION 2. City Code Amendment.** Section 50-103(a) of the Belle Isle Code of Ordinances is hereby amended as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

**Sec. 50-103. - Accessory uses.**

(a) *Home-based businesses occupation.*

- (1) It is the purpose of this section to provide for the orderly conduct of a limited commercial activity on property otherwise zoned for residential purposes. ~~Such activity shall not be of a nature that would impose any disruption to the quality of life, safety, character health welfare or appearance of a residential neighborhood.~~

- (2) Unless otherwise expressly permitted by applicable statutes or residential zoning regulations, including, but not limited to, mixed-used development plans and agreements for planned unit development, only commercial activity meeting the definition of a home-based businesses, as defined in § 559.955, Florida Statutes, is permitted on property zoned for residential use. Any use conducted entirely within a dwelling unit including the garage area, and carried on by an occupant thereof, which use is clearly incidental and accessory to the use of the residence for dwelling purposes and does not change the character thereof. This also includes the garage area and only if the garage door remains closed.
- (3) All business occupations, trades or professions qualifying as home occupations under this chapter shall exist and home-based businesses located on property zoned for residential purposes must operate subject to the following provisions, conditions and restrictions:
- 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 reside at the business. The business may have additional remote employees that do not work at the residential dwelling. Only such commodities made on the premises may be sold on the premises. All such sales of home occupation work or products shall be conducted within a building. Home occupations that market commodities via the internet, telephone or other off-site advertising may sell commodities produced off premises so long as said commodities are drop shipped to the client/customer. Shipment and delivery of products, merchandise, or supplies shall be limited to the hours of 7:00 a.m. and 7:00 p.m. in single rear axle vehicles.
- b. Parking related to the business activities of the home-based business must comply with the zoning requirements applicable to other residential properties within the same zoning classification, 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. Home-based businesses must comply with any regulations pertaining to the operation or parking of vehicles and trailers to residences where no home business is conducted. Any vehicles or trailers used in connection with the home-based 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 of the residence. There shall be no outdoor display, or storage of merchandise or products, nor shall there be any display visible from the outside of the building.
- c. 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 a residential dwelling to

accommodate a home-based business must conform to the residential character and architectural aesthetics of the neighborhood. No person shall be engaged in any such home occupation other than members of the immediate family residing on the premises. Written consent by the owner of the property is required to engage in any form of home occupation by a tenant at the time of application.

- d. No heavy equipment, defined herein as commercial, industrial, or agricultural vehicles, equipment, or machinery, may be parked or stored such that it is visible from the street or a neighboring residential property. equipment or machinery shall be used or stored on the premises in connection with the home occupation, except such that is normally used for purely domestic or household purposes. Examples include, but not limited to, cement mixers, tractors, welding or create excessive noise, smoke, fumes, odor, or vibration.
- e. 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. No more than 25 percent of the floor area of the first floor shall be used for home occupation purposes. Interior alterations are allowed as long as alterations do not result in the eliminations of the kitchen, dining area, bathrooms, living room or the bedrooms in the residence.
- f. The activities of the home-based business must be secondary to the property's use as a residential dwelling. No sign shall be used other than one nonilluminated nameplate attached to the building entrance, and such plate shall not exceed one square foot in area.
- g. The business activities conducted at the residence must 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 as such regulations apply to other residences where no business is conducted. Fabrication of articles, by way of example and not by way of limitation such articles commonly classified under the term "arts and handiercrafts," may be deemed a home occupation.
- h. All business activities conducted at the residence must 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 as such regulations would apply to a residence where no business is conducted. By way of example and not by way of limitation plant nurseries, tearooms, food processing, restaurants, sale of antiques, commercial kennels, day care, or pain management clinics shall not be allowed as home occupations.

- i. ~~By way of example and not by way of limitation barbershops and beauty parlors (not to exceed one chair), accountant offices, real estate offices, insurance offices or any professional office uses of the like may be deemed a home occupation.~~
- j. ~~No home occupation shall be permitted wherein group instruction or group assembly or activity is involved. To that end, no group dance instruction, group exercise class or similar activities.~~
- k. ~~No alteration of the residential character of the premises be made, and the home occupations shall not be allowed to create a nuisance or to create any undue disturbance.~~
- l. ~~No business, trade, profession or occupation shall qualify as a home occupation if it will generate noise which is audible beyond the property lines of the property upon which the promise is located.~~
- m. ~~No business, trade, profession, or occupation which generates vehicular trips or visitors to the premises exceeding ten per day shall qualify as a home occupation. Instruction based home occupations may receive one student/customer at a time, by appointment only.~~
- n. ~~No vehicles which display advertising relating to the business on the premises may be utilized so as to avoid the restriction or signs contained above.~~
- o. ~~No more than three passenger vehicles may be parked on or about the premises at any one time. Off street parking must be provided on a hard surface as provided in sections 30-73 and 30-133. The home occupation shall not generate excessive vehicular traffic or parking.~~
- p. ~~As a condition for granting of the home occupation license. The licensee agrees the city is authorized to conduct an inspection during normal business hours, with sufficient notice to the licensee, for the purpose of determining whether or not the provisions of this Code section are being complied with.~~
- q. ~~Use of the garage or any activity associated with the home occupation shall not displace any required parking in currently useable garage.~~

(4) Violations / enforcement. Anyone or any entity operating a home-based business in a manner inconsistent with this section is in violation of this code, and the city may enforce these provisions by any legal means available or as otherwise directed by general law, including, but not limited to, code enforcement proceedings or an action to enjoin any violations of this section. Nothing herein may be deemed to excuse or exempt the owner or operator of a

home-based business from paying any taxes, including business tax receipts, that may be due and owing in connection with the operation or establishment of any such business or complying with any federal or state occupational or licensure requirements. *Approval of application; administrative procedures.* All applications for home-occupation permits shall be reviewed by the city manager or city manager's designee for compliance with the provisions set forth herein.

- a. ~~All applicants must provide two proofs of residence; a Florida Driver's License and a utility bill, and a copy of the applicant's lease, if renting the premises.~~
- b. ~~Submitted applications which fail to comply with the provisions of the Code shall be denied, and the applicant notified, in writing, of the denial and the reasons for the denial.~~
- e. ~~Applications compliant with all the provisions of this Code shall be approved upon the posting requirement in section 50-103(5) below and issued a permit, provided that all written objections to the application, if any, have been reviewed and found to be without merit and unsupported by fact.~~

(5) *Intent.* It is the intent of this code provision to be interpreted in harmony with general law pertaining to home-based businesses, and in the event of any conflict with such general law, general law will govern and control the interpretation and application of this § 50-103(a). *Posting required for posting application.* All applicants for a home-occupation permit shall be required to place a notice on the premises, to inform the public that a home-occupation permit has been applied for. This notice shall be posted on the premises for ten days prior to the disposition of the permit applications. When the applicant is submitted to the city, a placard will be given to the applicant for posting. It is the applicant's responsibility to post the placard on the premises so it can be seen by the public.

(6) ~~*Appeals and hearing on application.* Applications which are denied by the city manager or the city manager's designee shall have the right to appeal to the planning and zoning board. Such appeal shall be in writing and delivered to the city clerk no less than ten days after the denial of the application. The appeal will be placed on the next available planning and zoning board agenda for action. The planning and zoning board shall have the right to overturn, modify or affirm the decision made by the city manager, or the city manager's designee. The board's decision shall be final.~~

(7) ~~*Revocation of home-occupation permit; procedure; conditions.*~~

- a. ~~Any person may seek revocation of a home-occupation permit by making written application to the city manager or city manager's designee and an~~



~~investigation will be made to determine whether the permit holder is conducting a home occupation in a lawful manner prescribed in this section.~~

- ~~b. If the city manager determines that the permit holder in in violation of the provisions of this section, the city manager may revoke, suspend, or revise the permit.~~
- ~~c. The decision of the city manager shall be subject to appeal to the planning and zoning board as in section 50-103(b). The decision of the board is final.~~
- ~~d. The following shall be considered as grounds for revoking a home occupational permit.~~
  - ~~1. Any change in the use or any change in extent or nature of the use or area of the dwelling unit being used, that is different from that specified in the approved home occupation application, this not first approved by the city manager.~~
  - ~~2. The operator of the home occupation must apply for a new home occupation permit prior to any such changes.~~
  - ~~3. Any change in use, extent of use, area of the swelling being used, or mechanical or electrical equipment being used that results in conditions not in accordance with the provisions of the require conditions shall result in immediate revocation of the permit.~~
- ~~(8) The following conditions shall apply for home occupation permits which have been revoked:~~
  - ~~a. *Initial revocation.* Reapplication may only occur when the condition(s) causing the revocation has been corrected.~~
  - ~~b. *Second revocation.* Reapplications may only occur after one year and when the condition(s) has been corrected.~~
  - ~~e. *Third revocation.* No permit shall be reissued.~~

**SECTION 3. Codification.** Section 2 of this Ordinance will be incorporated into the Belle Isle City Code. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this ordinance and the City Code may be freely made. In addition, to the changes made by this Ordinance, any and all references to “occupational license”

and "occupational license tax" in the City Code of Ordinances shall be changed to read "local business tax receipt" and "local business tax," respectively.

**SECTION 4. Severability.** If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion will be deemed a separate, distinct and independent provision, and such holding will not affect the validity of the remaining portions of this Ordinance.

**SECTION 5. Conflicts.** If a conflict arises between this Ordinance and any other ordinance or provision of law, this Ordinance controls to the extent of such conflict, as permitted under the law.

**SECTION 6. Effective date.** This Ordinance will become effective immediately upon adoption by the City Council of the City of Belle Isle, Florida.

FIRST READING: September 7, 2021

SECOND READING: September 21, 2021

ADOPTED this 21<sup>st</sup> day of September, 2021, by the City Council of the City of Belle Isle, Florida.


	YES	NO	ABSENT
Ed Gold	<u>✓</u>	<u>      </u>	<u>      </u>
Anthony Carugno	<u>✓</u>	<u>      </u>	<u>      </u>
Karl Shuck	<u>✓</u>	<u>      </u>	<u>      </u>
Randy Holihan	<u>✓</u>	<u>      </u>	<u>      </u>
Beth Lowell	<u>✓</u>	<u>      </u>	<u>      </u>
Jim Partin	<u>✓</u>	<u>      </u>	<u>      </u>
Sue Nielsen	<u>✓</u>	<u>      </u>	<u>      </u>

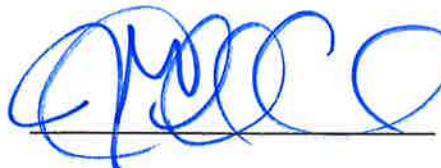
City of Belle Isle



Nicholas Fouraker, Mayor

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Attest:   
Yolanda Quiceno, CMC City Clerk

 For

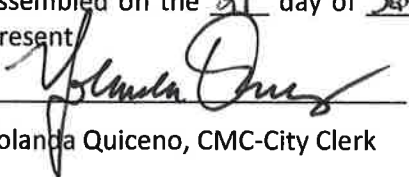
Kurt Ardaman, City Attorney

Approved as to form and legality for the use and  
reliance of the City of Belle Isle, Fl, only.

STATE OF FLORIDA

COUNTY OF ORANGE

I, Yolanda Quiceno, City Clerk of the City of Belle Isle, do hereby certify that the above and foregoing document ORDINANCE 21-10 was duly and legally passed by the Belle Isle City Council, in session assembled on the 21<sup>st</sup> day of SEPTEMBER, 2021, at which session a quorum of its members were present.

  
Yolanda Quiceno, CMC-City Clerk

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## CHAPTER 2021-202

### Committee Substitute for House Bill No. 403

An act relating to home-based businesses; creating s. 559.955, F.S.; prohibiting local governments from taking certain actions relating to the licensure and regulation of home-based businesses; specifying conditions under which a business is considered a home-based business; defining the term "heavy equipment"; authorizing home-based businesses to operate in areas zoned for residential use; specifying that home-based businesses are subject to certain business taxes; authorizing adversely affected current or prospective home-based business owners to challenge certain local government actions; authorizing the prevailing party in such challenge to recover specified attorney fees and costs; providing that certain existing and future residential association declarations and documents are not superseded by the act; providing that certain local laws, ordinances, or regulations are not superseded; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 559.955, Florida Statutes, is created to read:

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.

Section 2. This act shall take effect July 1, 2021.

Approved by the Governor June 29, 2021.

Filed in Office Secretary of State June 29, 2021.