

ISSUE PAPER SERIES

## Regulating Home-based Businesses

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NEW YORK STATE TUG HILL COMMISSION

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The Tug Hill Commission's Technical Papers and Issue Papers are written to help local officials and citizens in the Tug Hill region and other rural parts of New York State. Technical papers provide guidance on procedures based on questions frequently received by the commission. Issue papers provide background on key issues facing the region without taking advocacy positions. Other papers are available from the Tug Hill Commission. Please call us or visit our website for more information.



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# Regulating Home-Based Businesses

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# Regulating Home-Based Businesses

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## What is a home-based business?

Home-based businesses, also known as home occupations, have long been operated in the Tug Hill region and across upstate New York. This type of business occurs where the occupant or occupants of a residential dwelling also use their property to provide some type of retail service or sales, typically from a space within the dwelling, but occasionally from an accessory structure. Advances in technology, and the availability of high-speed internet, have only increased the popularity of home-based businesses.

Home-based businesses offer many benefits to their proprietors and also to the communities in which they are located. They also, however, can create some drawbacks for neighbors of the businesses and for the community at large. On the upside, home-based businesses:

- provide needed services to communities
- provide lower start-up business costs for proprietors
- reduce child/elder/disabled care needs for proprietors
- reduce commuting and gas consumption
- reduce parking needs in commercial areas

On the downside, home-based businesses can:

- increase traffic in residential neighborhoods
- reduce on street parking spaces available to neighboring residents
- create hazards, such as noise, vibration, smoke, dust, odors, heat, glare
- impact neighborhood aesthetics with signs, outdoor storage, non-residential architecture
- reduce property values if problems are created
- take businesses and commercial traffic and economic vitality away from central business districts

Carefully crafted zoning provisions and good enforcement can help ensure that these uses do not become problems in villages and towns.

## How can home-based businesses be regulated?

### Address them in a municipal comprehensive plan

It is important to address home occupations in some fashion in the municipality's comprehensive plan. This can be done by assessing the positive benefits that they bring to the community as weighed against their negative impacts on surrounding residential areas. Some type of count of existing operations is good to include so that trends can be evaluated in future

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updates of the plan. Public surveys and/or visioning exercises are great ways to gauge public perception of home-based business in a particular community and the ideal balance of home-based businesses in primarily residential neighborhoods. As always, a comprehensive plan is a great place to discuss issues such as these in plain language, as opposed to the ‘legalese’ of zoning laws.

### **Address through in zoning laws**

Regulating home-based businesses comes down to three things: defining them, deciding what type of permit (if any) is necessary for their establishment, and deciding what standards to apply to their operation. The third element is typically constituted in a section in the zoning law’s miscellaneous or general standards article.

The term ‘home occupation’ has been used widely in zoning laws in the past, but an increasing number of local governments are using the term ‘home-based business’ today. This term is a little broader and encompasses more types of uses. Whereas ‘home occupation’ conjures up the image of someone, such as a tax accountant or an architect working out of their home, ‘home based businesses’ encompasses those uses, plus small retail or manufacturing operations as well.

Definitions must state that the use “is clearly incidental and secondary to the use of the dwelling unit for residential purposes.” Definitions for home-based businesses can either be inclusive, exclusive, or some combination or both. Inclusive definitions list a number of potential occupations/businesses, such as engineer, real estate broker, or insurance agent. Exclusive definitions only list operations that are not allowed to be operated out of a home. It is recommended that any definition at least list a few operations that are not allowed. Among items that conflict with residential uses and do not work well as home-based businesses are automotive repair shops, automotive sales, medical services, and industrial type operations, such as sawmills.

A very necessary piece of the regulation of home-based businesses is to create a threshold over which a business transitions from being an accessory use to a principal use. Some home-based businesses tend to grow into full-fledged commercial uses. While this can be a great thing for an owner whose business is proving successful, it can be a bad thing for neighbors who are now seeing and feeling more negative impacts and change in the character of their neighborhoods. This threshold can appear as part of the definition, or it can appear in the section of the law where standards for home-based businesses are listed. This threshold is often set using items such as maximum floor area devoted to the business, number of employees, and the number of customers allowed on site at any given time.

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*Example of a home-based business zoning law definition*

## **Town of Vienna**

**Home Based Business:** A nonresidential, nonagricultural activity that is conducted for financial gain within a dwelling unit or in a building or structure accessory to a dwelling unit and is clearly incidental and secondary to the use of the dwelling unit for residential purposes. Home based businesses shall not include motor vehicle repair operations.

## **What type of permit should be required?**

An administrative process should be established for home-based businesses. The following permitting procedures may be considered: 1) no permit required, 2) zoning permit required, 3) site plan or special use permit review required.

Some municipalities do not require a permit even though home-based businesses are still required to operate within the limits established in the zoning law. This approach provides the least amount of ‘red tape’ for proprietors but can lead to local officials not being aware of new businesses and proprietors not being aware that their activities are subject to legal standards.

Most municipalities require a simple zoning permit for most home-based businesses. Some create a threshold under which a home-based business doesn’t require a permit. These are typically businesses that occupy a very small floor area, and/or have only one employee (who lives in the residence), and/or see customers by appointment only.

A few communities require the extra step of site plan review or special use permit review. This is less expedient for proprietors but gives the local government more control over the design of the operation and conditions attached. Requiring a special use permit allows greater control and standards and the opportunity for neighbors and residents to raise issues of concern at a public hearing, which is a statutorily mandated part of that process.

## **Typical standards**

Most zoning laws devote a full section to list standards that apply to all home-based businesses. Among typical standards are the following:

- limits to the square footage/percentage of floor area of the principal dwelling used
- limits of sale of goods produced/processed off-site
- stipulation that business be conducted entirely within residence

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- limits to numbers of customer vehicles
- limits to size and numbers of delivery vehicles
- minimum parking/loading area size and locations
- standards for locations of ingress/egress and circulation areas
- limits on numbers of customers/clients/students
- customer/clients limited to 'by appointment only'
- limits on numbers of paid/unpaid workers
- stipulation of residency status of workers
- limits on size and types of signs
- limits on or prohibition of outdoor storage
- limits on changes to architecture of the dwelling to accommodate the business
- limits on nuisances, such as noise, vibration, smoke, electromagnetic interference, dust, odors, heat, lighting/glare
- limits on hours of operation

Municipalities must be very careful when regulating business hours through zoning laws. Courts have held that for hours to be regulated, any restrictions must relate to the physical use of the land (as opposed to the internal operation of a business) and serve as a legitimate means to reduce impacts on neighboring properties.

Local governments are free to mix and match these standards, and to fine tune them to fit unique situations they face. Standards can also be different in different zoning districts within a municipality.

It should be noted that the Residential (Building) Code of New York State includes limits on home-based businesses conducted in existing residences. These include the following:

1. *The home occupation shall meet all requirements for habitable space and shall not exceed 15 percent of the floor area of the primary structure.*
2. *No more than one person not residing in the dwelling unit may be employed in the home occupation.*
3. *Inventory and supplies shall not occupy more than 50 percent of the area permitted to be used as a home occupation.*
4. *The home occupation shall not involve any operation considered to be hazardous.*

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Once a home-based business exceeds that threshold, the building is no longer considered primarily a dwelling for code purposes, and another section of the building code that pertains to the commercial operation being conducted in it applies.

*Example of a home-based business zoning law section*

### **Town of Leyden**

#### **Section 350. Home-Based Businesses**

Home-based business activities below the thresholds of the definition of this law are exempt from this law. All uses defined by this law as home-based businesses, shall be subject to the following standards:

1. operations outside of buildings are prohibited
2. no exterior changes to structures are allowed
3. signs that are flush with buildings shall not exceed 10 square feet, free-standing signs shall not exceed four square feet
4. manufacturing and assembly shall be limited to 3 horsepower tools
5. noise, glare, vibration limited – electronic and microwave interference with radios, TVs and other household appliances is prohibited
6. operation shall be limited to the hours of 6:00 a.m. to 9:00 p.m.
7. customer parking shall be on-site and off the public right-of-way

Any home-based business activity exceeding the standards and criteria above shall be considered a commercial use subject to site plan approval.

## Conclusion

Municipalities should plan for and regulate home based businesses in a way that allows and promotes them while being sensitive to their potential impacts on neighboring properties and the community as a whole. If well-conceived and operated, home-based businesses can coexist with residential uses while not taking excessive business traffic from central business districts. In some cases, home-based businesses can incubate new enterprises that eventually relocate to commercial space in downtown areas. As always, the Tug Hill Commission recommends Consulting with your local, county, or regional planning agency and your municipal attorney when amending zoning laws.