

# Local Land Use Law: The Basics for Small Business Owners

Small businesses of all kinds, including home-based businesses, are often subject to local zoning and other land-use regulations and ordinances. While usually not a source of major problems, if ignored these issues can easily become a significant nuisance. In rare cases, very serious consequences, including substantial legal costs and even *cease and desist* orders can ensue. It is wise to know your regulatory context so that you can avoid surprises.

## **Zoning**

In most NH communities, a *Zoning Ordinance* establishes rules regulating how land may be used. Typically, a *zoning map* is developed, dividing the community into a number of distinct *zones*. These zones are distinct areas of land that may differ from each other in a variety of ways. Municipalities have the right to permit and/or forbid certain activities within each zone. Many of the regulations deal with lot sizes, where structures can be placed on lots, and other “dimensional requirements.” Others deal with the actual use of the property – what activities are allowed within a given zone. Business activities are often regulated in great detail.

As a business owner, you should be sure to find out what zone your business will be located in, and what uses are permitted in that zone. You can do this yourself, by looking it up in your community’s zoning map and description of permissible uses in the zone. In many cities and towns, these documents are available online through the town website, and copies of the ordinances and maps may be available in your public library. If you prefer, you can call or visit your local *Planning Department* or *Zoning Official* and ask to be shown the regulations that pertain to your location.

Often, a zoning ordinance contains a *Table of Uses*, which provides a quick summary of the uses that are allowed in each zone. Sometimes, there are uses that are allowed *by right* – this means that you are entitled to that use within the zone – the use can’t be denied, as long as you comply with any other requirements. There may also be uses that are categorized as *conditional* or *by special exception*; in these cases the municipality may attach additional requirements to the use, or deny it altogether, on a case-by-case basis. Commonly the *Planning Board* is authorized to grant conditional uses and special exceptions. If a specific use is not permitted, or is not listed at all, it may still be allowed by obtaining a *variance*. An independent *Zoning Board* makes decisions on applications for variances.

If your business activities represent a use that is conditional, allowed by special exception, or requires a variance, you must obtain the proper permission, or risk an order to cease and desist – which may require you to stop doing business altogether. This normally occurs as the result of a complaint filed by an *abutter* (a neighbor). Unless the issues at hand are extremely simple, it can take months to settle the dispute, and your business can be stalled or disrupted for that entire time period.

## **Overlay Districts:**

Many NH communities have *overlay districts* – additional special zones that have their own maps, and that may cover part or all of other established zones. These overlay zones usually

have additional, more stringent requirements and prohibitions. Some examples of common overlay districts include *historic*, *shoreland protection*, *flood plain*, and the like. If you are located in an overlay district, there will be additional rules that you must be aware of.

### **Home-Based Businesses:**

Even *home-based businesses* are subject to local zoning. It is common for a zoning ordinance to contain several categories of home occupations, usually divided based on the presence or absence of employees, bulky equipment, noise, odors, pick-ups and deliveries, and customer visits. Do not assume that you are entitled to conduct your business from you home! If you have or intend to operate a business from your home, it may be prudent to talk with any neighbors about your plans. This will make it more likely that they will come to you first should they have any concerns or complaints, rather than filing a complaint with town or city government. This gives you an opportunity to negotiate a mutually agreeable solution.

### **Signs:**

Most businesses make use of some type of signage; virtually all communities have regulations governing signs. These may differ from zone to zone, and may set limits on number, size and type of sign, whether and how they may be lighted. Sign height and proportion to the building and lot are often subject to regulation. The important thing for you to understand about sign regulation is that you are not entitled to have any signage you may want – your sign must comply with the rules. If it does not, you will be ordered to remove it.

### **Change of Use:**

Some municipalities require a new *occupancy permit* whenever the use or user of commercial or industrial property changes. Occupancy permits are issued by the local *building inspector* or *code enforcement official*. A *fire safety inspection* by the local fire department or NH State Fire Marshal may be required.

### **Code Compliance:**

Your business will be expected to maintain compliance with all applicable building, life safety and fire codes. Failure to comply can result in fines, and you will have to correct any non-compliance.

### **Summary**

While land use law and code compliance are often not core issues for small businesses, they represent significant hazards if ignored. Consequences range from negative publicity and poor neighbor relations to fines and legal action. A prudent business owner makes an effort to be a good citizen and to comply with laws and regulations.