

## **LOCAL LAND USE LAW: THE BASICS FOR SMALL BUSINESS OWNERS**

Small businesses of all kinds, including home-based businesses, can be subject to local zoning and other land-use regulations and ordinances. If a business owner ignores these laws and rules, it can lead to serious consequences, legal costs and even cease-and-desist orders. It's best to know up front what regulations might apply to your business.

### **Zoning**

In most New Hampshire communities, a zoning ordinance establishes rules regulating how land may be used. A zoning map may be in effect which divides the community into different zones, such as rural, residential and commercial. Municipalities have the right to permit and/or forbid certain activities within each zone. Often the regulations will 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 detail.

As a business owner, you should determine what zone you want or need to have your business in and be very clear on what uses are permitted in that zone. A visit to your town offices and/or its website will lead you to information about the zoning map and permissible uses. Your public library may have copies of the ordinances and maps as well.

A zoning ordinance usually contains a *Table of Uses*, which provides a quick summary of the uses that are allowed in each zone. Sometimes, uses 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. Some uses 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 New Hampshire 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 overlay districts include *historic, shoreland protection and flood plain* districts. If your business will be located in an overlay district, there will be additional rules that you must follow.

### **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.

If you have or intend to operate a business from your home, you may want to talk with your neighbors about your plans first. This will make it more likely that they will come to you first with 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**

You are not entitled to put up any sign that you may want for your business. Almost all communities have regulations governing signs, and these differ from zone to zone. They may set limits on the number, size and type of sign that is allowed, or on whether and how they may be lighted. Sign height and proportion to the building and lot are considered.

### **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 New Hampshire 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 noncompliance.

### **Summary**

Land use law and code compliance are often not major considerations for small businesses, but any type of business needs to be aware of local regulations in order to avoid legal problems down the road.