GOLDWATER INSTITUTE

Home-Based Business Fairness Act

AN ACT relating to home-based businesses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF _____:

(A) That the use of a residential dwelling for a home-based business is a permitted use, except that this permission does not supersede any of the following:

1. Any deed restriction, covenant or agreement restricting the use of land,
2. Any master deed, by-law or other document applicable to a common interest ownership community.

(B) A municipality shall not prohibit a no-impact home-based business or otherwise require a person to apply, register or obtain any permit, license, variance or other type of prior approval from the municipality to operate a no-impact home-based business.

(C) A municipality may establish reasonable regulations on a home-based business if the regulations are narrowly tailored for any of the following purposes:

1. The protection of the public health and safety, as defined in (STATE CODE) including rules and regulations related to fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste, pollution and noise control.
2. Ensuring that the business activity is:
    a. Compatible with residential use of the property and surrounding residential use;
    b. Secondary to the use as a residential dwelling;
    c. Complying with state and federal law and paying applicable taxes.
3. Limiting or prohibiting the use of a home-based business for the purposes of selling illegal drugs, liquor, operating or maintaining a structured sober living home, pornography, obscenity, nude or topless dancing and other adult-oriented businesses.

(D) A municipality shall not require a person as a condition of operating a home-based business to:

1. Rezone the property for commercial use;
2. Install or equip fire sprinklers in a single family detached residential dwelling or any residential dwelling with not more than two dwelling units.

(E) The question whether a regulation complies with this section shall be a judicial question, and the municipality that enacted the regulation shall establish by clear and convincing evidence that the regulation complies with this section.

(F) For the purposes of this section:

1. “Goods” means any merchandise, equipment, products, supplies or materials.

2. “Home-based business” means any business for the manufacture, provision or sale of goods or services that is owned and operated by the owner or tenant of the residential dwelling.
3. “No-impact home-based business” means a home-based business for which all of the following apply:
    a. The total number of on-site employees and clients do not exceed the municipal occupancy limit for the residential property.
    b. The business activities are characterized by all of the following:
        i. Are limited to the sale of lawful goods and services;
        ii. Do not generate on-street parking or a substantial increase in traffic through the residential area;
        iii. Occur inside the residential dwelling or in the yard;
        iv. Are not visible from the street.