



MEMO

TO: Planning and Zoning Commission

FROM: Sheila DeSchaaf, Planner II

DATE: October 12, 2009

**SUBJECT: Unified Development Code (UDC) Amendment, Section 15-02-004
Residential Districts, Home-based businesses**

P-361-09

The attached Council Decision Request outlines the basis for possible amendments to the current Home-based business standards contained within the UDC.

A copy of home-based business provisions from another community, touted by the American Planning Association's Planning Advisory Service as a good "model ordinance," has also been attached for reference purposes.

Staff believes that the current UDC provisions related to home-based businesses could be updated and expanded to allow greater flexibility in transitional areas (Multi-family zoning districts) and for dwelling units that are within, bordered by, or surrounded by Commercial districts or uses.

Based upon informal input, comments, suggestions and concerns gathered during this meeting, staff will compose a draft ordinance for more formal input at a future meeting.

At a minimum, the discussion should cover the following considerations:

- Current UDC provisions; areas of concern, clarification needed, etc
- Creation of several categories of home-based businesses, such as Level A (provisions substantially the same as current provisions and applicable to all single family residential properties within platted subdivisions, Level B (provisions substantially the same as current provisions, with allowances based upon lot size, surrounding uses, etc), and Level C (expanded provisions for home-based businesses within zoning districts where more intense development is outright permitted).
- Number of employees that could be appropriate
- Location/space; should the floor area allowed for the business use be regulated, and should the location of the business activity be regulated (ie. Within attached garage, detached accessory structure, yard area)
- Traffic and vehicle parking provisions (ie trips per day, number of customers or employees allowed at site concurrently)
- Review of license application if expanded uses are permitted
- Allowed uses, conditional uses, prohibited uses

COUNCIL DECISION REQUEST

SUBJECT: Amend Unified Development Code Home-Based Business Provisions

MEETING DATE: September 24, 2009

PAYSON GOAL: NEW:

EXISTING:

TENTATIVE SCHEDULE:

ITEM NO.:

SUBMITTED BY: Ray Erlandsen
Acting Comm Dev Director

AMOUNT BUDGETED: \$0.00

SUBMITTAL TO AGENDA

EXPENDITURE REQUIRED: \$0.00

APPROVED BY TOWN MANAGER

CONT. FUNDING REQUIRED: \$0.00

EXHIBITS (If Applicable, To Be Attached):

POSSIBLE MOTION

“I move to direct staff to prepare possible amendments to the Unified Development Code related to home-based businesses and neighborhood retail/office uses within multi-family districts.”

SUMMARY OF THE BASIS FOR POSSIBLE MOTION:

As technology evolves, and business practices change, municipalities need to assess current practices to stay competitive. Staff finds that the home-based business provisions could be expanded, especially within certain districts, to provide for increased income-producing opportunities for property owners and the Town.

Currently, home-based business requirements exist within the residential zoning district standards section of the Unified Development Code. At a minimum, staff believes home-based businesses within multi-family and commercial districts should be regulated differently than those home-based businesses wholly within single family residential districts. Additionally, the unique characteristics of specific sites such as size of the property, surrounding uses, and allowed uses should be considered within the regulations.

If the Council chooses to direct staff to proceed, the amendment process would begin with a series of opportunities for public comment at applicable Board & Commission meetings, the Town’s website, by phone and by mail.

After public input, staff would draft code amendments related to home-based businesses and non-residential uses within multi-family or commercial districts for formal consideration and public hearing before the Planning & Zoning Commission. Once the Planning & Zoning Commission provides a recommendation, the amendments would be brought before the Council for final consideration.

COUNCIL DECISION REQUEST

PROS: Could provide opportunity for property owners to maximize the use of their land. May provide incentives for property maintenance within currently existing transitional areas and renewed interest in properties where full commercial development standards are cost prohibitive for small scale commercial uses.

CONS: May be viewed as less-than-beneficial by owners of commercial property with vacant existing commercial improvements.

PUBLIC INPUT (if any): N/A

BOARD/COMMITTEE/COMMISSION ACTIONS/RECOMMENDATIONS (if any) (give dates and attach minutes):

FUNDING:

Acct:	Budget:	Available:	Expense:	Remaining:
Acct:	Budget:	Available:	Expense:	Remaining:
Acct:	Budget:	Available:	Expense:	Remaining:

BA: _____ Date: _____

CLACKAMAS COUNTY ZONING AND DEVELOPMENT ORDINANCE

822 HOME OCCUPATIONS (3/24/05)

822.01 PURPOSE

This section is adopted to:

- A. Encourage economic development in the county by promoting home occupations;
- B. Reduce vehicle miles traveled by providing opportunities for people to work from their homes;
- C. Recognize the differences between residential communities, and provide standards for home occupations consistent with these differences;
- D. Ensure the compatibility of home occupations with other uses permitted in the underlying zoning district;
- E. Maintain and preserve the character of the community and residential neighborhoods; and
- F. Mitigate noise, traffic and other possible negative effects of home occupations.

822.02 DEFINITIONS

For the purposes of this section, the following definitions shall apply:

- A. Home Occupation: An occupation or business activity which results in a product or service; is conducted, in whole or in part, in a dwelling and/or an accessory building normally associated with primary uses allowed in the underlying zoning district; is conducted by at least one family member occupying the dwelling; and is clearly subordinate to the residential use of the subject property. Home occupations do not include garage sales, yard sales, holiday bazaars, or home parties which are held for the purpose of the sale or distribution of goods or services unless such sales and/or parties are held more than 6 times in a calendar year or operate in excess of 24 total days in a calendar year. (5/22/03)
- B. Operator: The person who conducts the home occupation, has majority ownership interest in the business, lives full-time in a dwelling on the subject property and is responsible for strategic decisions and day-to-day operations of the business.

CLACKAMAS COUNTY ZONING AND DEVELOPMENT ORDINANCE

- C. Accessory Space: Any building space not constructed to residential standards under the State of Oregon One and Two Family Dwelling Code and/or the State of Oregon Structural Specialty Code that is used for the home occupation, including, but not limited to, an attached garage, detached garage or pole building. Accessory space does not include manufactured dwellings, residential trailers or recreational vehicles.
- D. Employee: Any on-site person, whether they work full-time or part-time in the home occupation business, including, but not limited to, the operator, partners, assistants, and any other persons or family members participating in the operation of the business.
- E. Incidental Use: The use of no more than 25% of the floor area of a structure or 500 square feet, whichever is less.
- F. Vehicle: Any motorized or non-motorized transportation equipment intended for use on public roads and associated with the home occupation, including, but not limited to, a car, van, pickup, motorcycle, truck, detached trailer or a truck tractor with no more than one trailer. An exception may be made for a detached trailer or trailers, which may be categorized as equipment if stored within an enclosed building approved for this use through the home occupation permit. Accessory space utilized for storage of a trailer shall be included in the calculation of total accessory space approved for the home occupation.
- G. Vehicle Trip: A vehicular movement either to or from the subject property by any vehicle used in the home occupation, any delivery vehicle associated with the home occupation, or any customer or client vehicle.
- H. Abutting Properties: For purposes of this section, “abutting” properties include properties directly across any private, public, or county road provided the functional classification of the road is below that of a “collector”.
- I. Property: For purposes of this section, “property” refers to a legal lot of record as determined by the Planning Division.

822.03 LEVEL 1 - MINOR HOME OCCUPATION

- A. Level 1 Minor Home Occupations shall comply with the following standards:
 - 1. Location: Any property in residential use. (5/22/03)

CLACKAMAS COUNTY ZONING AND DEVELOPMENT ORDINANCE

2. Scale: A Minor Home Occupation shall be conducted within a dwelling and shall be clearly incidental to the use of the structure as a dwelling. Incidental use of accessory structure space is allowed but is limited to storage purposes only.
3. Character: There shall be no visible evidence of the conduct of a Minor Home Occupation from outside the dwelling except as otherwise allowed by this subsection.
4. Participants: No persons other than members of the immediate family residing on the premises shall be employed in the operation of the Minor Home Occupation.
5. Storage: There shall be no outside storage associated with a Minor Home Occupation.
6. Display of Products: There shall be no display of products visible from outside an enclosed building space.
7. Traffic:
 - a. A Level 1 Minor Home Occupation shall not involve the use, parking, storage or repair of any vehicle exceeding a gross vehicle weight of 11,000 pounds, except deliveries by parcel post, United Parcel Service or similar in-town delivery service trucks. Bulk deliveries, parcel post, or similar in-town delivery services shall be limited to no more than one delivery per day.
 - b. Customer/client traffic shall be limited to a maximum of ten trips per day.
8. Parking:
 - a. No vehicles associated with a Minor Home Occupation shall be stored, parked, or repaired on public rights-of-way.
 - b. The maximum number of customer or client vehicles that are associated with a home occupation and located on the subject property shall not exceed two at any time.
 - c. Two parking spaces for customers/clients, in addition to required residential parking, shall be provided in defined areas of the subject property. Such areas shall be located behind the front yard setback and be accessible, usable, designed and surfaced for parking.

CLACKAMAS COUNTY ZONING AND DEVELOPMENT ORDINANCE

9. Noise, Equipment, and Process Restrictions:

- a. A Minor Home Occupation shall not create noise, vibration, glare, fumes or odor detectable to normal sensory perception off the subject property.
- b. A Minor Home Occupation shall not create visual or audible electrical interference in any radio or television off the subject property or cause fluctuations in line voltage off the subject property.

B. No land use permit is required to operate a Minor Home Occupation.

822.04 LEVEL 2 - MAJOR HOME OCCUPATION

A. Level 2 Major Home Occupations shall comply with the following standards:

1. Location: Any property where the majority of abutting properties are equal to or less than two acres.
2. Operator: The operator of the home occupation shall reside in a dwelling on the subject property.
3. Employees: There shall be no more than five full or part-time employees.
4. Accessory Space: In addition to the incidental use of the dwelling, a maximum of 500 square feet of accessory space may be used for a Level 2 Major Home Occupation. In the case of a bed and breakfast homestay, use of the dwelling is not required to be limited to incidental use.
(5/22/03)
5. Noise: Between 8:00 a.m. and 6:00 p.m., a Level 2 Major Home Occupation shall not create noise that, when measured off the subject property, exceeds the greater of 60 dba or the ambient noise level. Between 6:00 p.m. and 8:00 a.m., a Level 2 Major Home Occupation shall not create noise that is detectable to normal sensory perception off the subject property. Noise generated by passenger vehicles exiting or entering the subject property shall be exempt from these standards. These off-the-property noise standards shall not apply to public rights-of-way and railroad rights-of-way.

CLACKAMAS COUNTY ZONING AND DEVELOPMENT ORDINANCE

6. Equipment and Process Restrictions: A Level 2 Major Home Occupation shall not create vibration, glare, fumes or odors detectable to normal sensory perception off the subject property. A home occupation shall not create visual or audible electrical interference in any radio, television, or other electronic device off the subject property or cause fluctuations in line voltage off the subject property.
7. Outside Storage: No outside storage, display of goods or merchandise or external evidence of a Level 2 Major Home Occupation shall occur except as specifically allowed by this subsection.
8. Signs: Signs shall be permitted pursuant to Section 1010.
9. Traffic: A Level 2 Major Home Occupation shall not generate more than 20 vehicle trips per day.
10. Parking:
 - a. No vehicle associated with a Level 2 Major Home Occupation shall be stored, parked or repaired on public rights-of-way.
 - b. The maximum number of vehicles that are associated with a Level 2 Major Home Occupation and located on the subject property shall not exceed four at any time, including, but not limited to, employee vehicles and client vehicles.
 - c. A Level 2 Major Home Occupation shall not involve the use, parking, storage or repair of any vehicle exceeding a gross vehicle weight of 11,000 pounds, except deliveries by parcel post, United Parcel Service or similar in-town delivery service trucks.
 - d. Parking spaces needed for employees or clients of a Level 2 Major Home Occupation shall be provided in defined areas of the subject property. Such areas shall be accessible, usable, designed and surfaced for parking.
11. Hazards: If a Level 2 Major Home Occupation use will alter the occupancy classification of an existing structure as determined by the building official, then the structure shall be made to conform with the State of Oregon Structural Specialty Code and/or One and Two Family Dwelling Code and the requirements of the State Fire Marshal or the local fire district. However, in no case shall:
 - a. A use be allowed that requires a structure to be upgraded or built to more restrictive requirements than a S3 occupancy; or

CLACKAMAS COUNTY ZONING AND DEVELOPMENT ORDINANCE

- b. Hazardous material be used or stored on the subject property in quantities not typical of those normally associated with primary uses allowed in the underlying zoning district.

12. Prohibited Uses: The following uses shall be prohibited as a Level 2 Major Home Occupation:

- a. Repair of motorized vehicles and equipment, including the painting or repair of automobiles, trucks, trailers or boats;
- b. Towing and vehicle storage business.

13. Access: The subject property must have frontage on, and direct access from, a constructed public, county, or state road, or take access on an exclusive road or easement serving only the subject property. If property takes access via a private road or easement which also serves other properties, evidence must be provided by the applicant, in the form of a petition, that all other property owners whose property access is affected agree to allow the specific home occupation described in the application. Such evidence shall include any conditions stipulated in the agreement.

- B. A Level 2 Major Home Occupation requires a land use permit pursuant to Subsection 822.08.

822.05 LEVEL 3 - MAJOR HOME OCCUPATION

A. Level 3 Major Home Occupations shall comply with the following standards:

- 1. Location: Any property where a minimum of 50 percent of abutting properties are greater than 2 acres in size. (5/22/03)
- 2. Operator: The operator of a Level 3 Major Home Occupation shall reside in a dwelling on the subject property.
- 3. Employees: There shall be no more than five full- or part-time employees.
- 4. Accessory Space: In addition to the incidental use of the dwelling, a maximum of 1,500 square feet of accessory space may be used for a Level 3 Major Home Occupation. In the case of a bed and breakfast homestay, use of the dwelling is not required to be limited to incidental use. (5/22/03)

CLACKAMAS COUNTY ZONING AND DEVELOPMENT ORDINANCE

5. Noise: Between 8:00 a.m. and 6:00 p.m., a Level 3 Major Home Occupation shall not create noise that, when measured off the subject property, exceeds the greater of 60 dba or the ambient noise level. Between 6:00 p.m. and 8:00 a.m., a home occupation shall not create noise that is detectable to normal sensory perception off the subject property. Noise generated by passenger vehicles exiting or entering the subject property shall be exempt from these standards. These off-the-property noise standards shall not apply to public rights-of-way and railroad rights-of-way.
6. Equipment and Process Restrictions: A Level 3 Major Home Occupation shall not create vibration, glare, fumes or odors detectable to normal sensory perception off the subject property. A Level 3 Major Home Occupation shall not create visual or audible electrical interference in any radio, television, or other electronic device off the subject property or cause fluctuations in line voltage off the subject property.
7. Outside Storage: No outside storage, display of goods or merchandise or external evidence of a Level 3 Major Home Occupation shall occur except as specifically allowed by this subsection.
8. Signs: Signs shall be permitted pursuant to Section 1010.
9. Traffic: A Level 3 Major Home Occupation shall not generate more than 30 vehicle trips per day.
10. Parking:
 - a. No vehicle associated with a Level 3 Major Home Occupation shall be stored, parked or repaired on public rights-of-way.
 - b. The maximum number of vehicles that are associated with a Level 3 Major Home Occupation and located on the subject property shall not exceed five at any time, including, but not limited to, employee vehicles, client vehicles and vehicles to be repaired. Vehicles to be repaired shall be located within an enclosed building or in an area not visible from off the subject property.
 - c. No more than one of the five vehicles permitted to be located on the subject property at one time shall exceed a gross vehicle weight of 11,000 pounds.

- d. Parking spaces needed for employees or clients of a Level 3 Major Home Occupation shall be provided in defined areas of the subject property. Such areas shall be accessible, usable, designed and surfaced for parking.

11. Hazards: If a Level 3 Major Home Occupation use will alter the occupancy classification of an existing structure as determined by the building official, then the structure shall be made to conform with the State of Oregon Structural Specialty Code and/or One and Two Family Dwelling Code and the requirements of the State Fire Marshal or the local fire district. However, in no case shall:

- a. A use be allowed that requires a structure to be upgraded or built to more restrictive requirements than an H-4 or H-5 occupancy, except incidental painting in conjunction with an H-4 or H-5 use; or
- b. Hazardous materials be used or stored on the subject property in quantities not typical of those normally associated with primary uses allowed in the underlying zoning district.

12. Access: The subject property must have frontage on, and direct access from, a constructed public, county, or state road, or take access on an exclusive road or easement serving only the subject property. If property takes access via a private road or easement which also serves other properties, evidence must be provided by the applicant, in the form of a petition, that all other property owners whose property access is affected agree to allow the specific home occupation described in the application. Such evidence shall include any conditions stipulated in the agreement.

- B. A Level 3 Major Home Occupation requires a land use permit pursuant to Subsection 822.08.

822.06 EXCEPTIONS

- A. A Level 2 or Level 3 Major Home Occupation taking direct vehicular access to a road with a functional classification of collector, minor or major arterial, or freeway/expressway as identified on Comprehensive Plan Maps V-2a or V-2b, may exceed any of the standards identified in Subsections 822.04(A)(3) through (12) and 822.05(A)(3) through (11) provided the use remains compatible with the area and demonstrates compliance with remaining provisions of this subsection. The following factors shall be considered when determining if a use is compatible:

CLACKAMAS COUNTY ZONING AND DEVELOPMENT ORDINANCE

1. The number of specific standards provided by this section that will be exceeded; it is presumed that the more standards exceeded the more difficult it will be to demonstrate compatibility;
 2. The character of the neighborhood, including such factors as the presence of other similar uses, proximity of other dwellings, the level of surrounding traffic, the size of accessory buildings, background noise levels, and other outside storage uses; (3/24/05)
 3. The ability to mitigate impacts by screening, landscaping, building location, building design, and other property improvements (for example driveway or road improvements);
 4. Potential environmental impacts, including effects on air and water quality;
 5. Provision of adequate and safe access to public roadways.
- B. The applicant shall demonstrate the availability of services adequate to serve the proposed use, including transportation, public facilities and other services existing or planned for the area affected by the use. At a minimum, the applicant shall demonstrate compliance with Section 1022.
- C. Process: Exceptions shall be processed in conjunction with the Home Occupation Permit application through the Hearings Officer review process pursuant to ZDO Section 1300.
- D. Limitations: The following limitations shall apply to all home occupations:
1. Maximum accessory space for a home occupation shall not exceed 3,000 square feet;
 2. The number of employees on property zoned Exclusive Farm Use (EFU), Timber (TBR), or Ag/Forest (AG/F) shall not exceed five total;
 3. No structure shall be used in the operation of a home occupation in the Exclusive Farm Use (EFU), Timber (TBR) or Ag/Forest (AG/F) zoning districts not otherwise allowed in the zoning district.

822.07 PREEXISTING USES

Home occupations legally established prior to [effective date of this amendment], which complied with all provisions of this ordinance then in effect, including appropriate permits if required, are exempt from the requirements of this section. Those preexisting home occupations that were subject to annual permit review shall be reviewed for compliance with the standards in effect at the time of their establishment, on the same schedule as home occupations established under the current ordinance. Home occupations

CLACKAMAS COUNTY ZONING AND DEVELOPMENT ORDINANCE

established prior to the requirement for permit application and review are not subject to automatic review, but must continue to comply with the standards in effect at the time of their establishment. Preexisting home occupations may not be transferred to another operator or be enlarged without satisfying all the requirements of this section.

822.08 PERMIT AND APPLICATION PROCEDURES FOR MAJOR HOME OCCUPATIONS

- A. Application: Application for a Major Home Occupation permit shall be made to the Planning Division on a form provided by the Division and shall be accompanied by the prevailing filing fee as established by the Board of County Commissioners.
- B. Process:
 - 1. Application for a Major Home Occupation permit without an exception shall be subject to the Planning Director review procedures in Subsection 1305.02;
 - 2. Application for a Major Home Occupation permit processed with an exception shall be subject to the Hearings Officer review procedures in Section 1300.
- C. Time Limit: A Major Home Occupation permit and subsequent renewals shall be valid for a period of three years from the date of approval.
- D. Renewals: A Major Home Occupation permit may be renewed an unlimited number of times. A renewal application shall be reviewed pursuant to the Planning Director review procedures of Subsection 1305.02 or the Hearings Officer review procedures of Section 1300, as applicable. A renewal application shall be evaluated on the basis of the parcel size analysis first applied to the home occupation.