



MEMO

TO: Planning and Zoning Commission

FROM: Sheila DeSchaaf, Planner II

DATE: September 13, 2010

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

P-361-09

Background:

In September of 2009 the Town Council directed staff to prepare possible amendments to the Unified Development Code related to home-based businesses and neighborhood retail/office uses within multi-family districts.

Subsequently, the Planning and Zoning Commission recommended staff model proposed revisions after Clackamas County's provisions, which were touted by the American Planning Association's Planning Advisory Service as a "model ordinance."

Analysis:

Attached to this memo is the draft of the proposed amendments based upon Clackamas County's 3-tiered approach. The first, most restrictive tier, Level One Home Occupations, is most similar to current UDC provisions and would be applicable to all single family residential properties. Level Two Home Occupations allow expanded uses in multi-family zoned areas and single family areas where a property fronts on a busier, arterial roadway. Lastly, Level Three Home Occupations allow the widest variety of uses and would only be applicable to single family residences that are located within commercially zoned areas. Additionally, all Level Three Home Occupations require Conditional Use Permit approval.

References:

UDC Section 15-02-004.B.2, Home-Based Businesses

Staff Recommendation:

Staff recommends approval of P-361-09, an amendment to the Unified Development Code, deleting Section 15-02-004.B.2-Home-Based Businesses (a. – j.) and replacing those provisions with the attached proposed Section 15-02-016-Home Occupations.

Suggested Motion to Recommend APPROVAL:

If the Commission agrees with the listed revisions, a possible motion could be:

“I move the Planning and Zoning Commission recommend to the Town Council approval of P-361-09, an amendment to the Unified Development Code, Section 15-05, Signs, deleting Section 15-02-004.B.2-Home-Based Businesses (a. – j.) and replacing those provisions with the attached proposed Section 15-02-016-Home Occupations.”

15-02-016 Home Occupations

A. Purpose and Intent

The Town of Payson desires to enable its residents to use their residence for home-based business activities to facilitate economic development, but also recognizes the need to protect surrounding residential areas from potential adverse impacts generated by business activities. The action of approving a home occupation constitutes a finding that the use will not adversely impact surrounding properties.

B. Licensing and Inspections

A home occupation must secure and maintain a Payson Business License and be in compliance with the Arizona Department of Revenue Transaction Privilege Tax Licensing requirements. As a condition of issuing and maintaining a Business License, a home occupation licensee must allow inspections to be conducted by representatives of the Community Development and Fire Departments to verify compliance with standards and limits prescribed by this Code and stipulations of Conditional Use Permits. Such inspections shall occur between the hours of 8 AM and 5 PM and only upon 24 hours notice to the licensee.

C. Limits on Equipment/Operation Nuisances

1. The operation of home occupation equipment, not typically used in residential dwelling units shall not:
 - a. Create vibrations, heat, glare, dust, odors, or smoke discernable at the property lines;
 - b. Generate noise discernable by the human ear at the property lines;
 - c. Create electrical or magnetic interference off the premises of the dwelling unit; or
 - d. Consume utility quantities that negatively impact the delivery of those utilities to surrounding properties.

D. Fire Code Compliance

A home occupation shall conform to the requirements set forth in the adopted Fire Code. No flammable liquids or hazardous materials may be handled, used or stored incidental to a home occupation.

E. Approvals Required

1. A home occupation may be approved administratively by the Community Development Director, his or her designee, with an application for a Business License, if the owner / operator provides written certification that the business use of a dwelling unit will comply with this Code. Such written certification shall be incorporated and made part of the Business License.
2. The Town of Payson will not enforce subdivision covenants, conditions and restrictions (CC&R's) that may be more or less restrictive than standards and limits prescribed by this Code. Subdivision covenants, conditions and restrictions are terms of contracts between private property owners. CC&R's and provisions of this Code are independently enforceable against the property owner in a court of jurisdiction.
3. A violation of either this Code or a stipulation of a Conditional Use Permit shall be cause for revocation of a Business License.

F. Prohibited Home Occupations

1. The following uses shall be prohibited as home occupations in all districts unless otherwise noted:
 - a. Motor vehicle repair services
 - b. Kennels
 - c. Restaurants, clubs and drinking establishments
 - d. Undertaking and funeral parlors
 - e. Adult uses, including but not limited to entertainment establishment and theaters.
 - f. Storage of firewood for sale
 - g. Taxi services; transit, express mail or package carriers, could be allowed in R-3, C-1, C-2, C-3 districts with an approved Conditional Use Permit
 - h. Stables and pet grooming services, could be allowed in all districts with an approved Conditional Use Permit

G. Operational Standards

There are three levels of allowable home occupations, Level One – Minor Home Occupation, Level Two – Intermediate Home Occupation and Level Three – Major Home Occupation. Standards for each Level of operation are as follows:

1. LEVEL ONE – MINOR HOME OCCUPATION

- a. Location: Any home located within an R-1, Single Family Residential District
- b. 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 limited to storage purposes only.
- c. Character: There shall be no visible evidence of the operation of a minor home occupation from outside the dwelling except as otherwise allowed by this subsection.
- d. Employees: No persons other than the members of the immediate family residing on the premises shall be employed in the operation of a level one minor home occupation unless authorized by a Conditional Use Permit. In no case shall a level one minor home occupation employ more than one non-resident employee.
- e. Storage: There shall be no outside storage associated with a level one minor home occupation.
- f. Display of Products: There shall be no display of products visible from outside an enclosed building space.
- g. Vehicles/Traffic:
 - i. No more than 2 customer/client visits per day, except with an approved Conditional Use Permit.
 - ii. No person operating a level one home occupation shall use or cause delivery vehicles to visit their premises except for passenger vehicles, mail carriers and express carriers, such as vehicles used by United Parcel Service and Federal Express.

- iii. A level one home occupation shall be limited to the parking or storage of one vehicle on the premises that is used in the business, but it may not exceed one-ton capacity.
- h. Parking: Level one home occupations are not required to provide parking beyond what is required for residential uses, but on-street parking is prohibited.
- i. Noise, Equipment and Process Restrictions: The operation of home occupation equipment, not typically used in residential dwelling units shall not; 1) Create vibrations, heat, glare, dust, odors, or smoke discernable at the property lines; 2) Generate noise discernable by the human ear at the property lines; 3) Create electrical or magnetic interference off the premises of the dwelling unit; or 4) Consume utility quantities that negatively impact the delivery of those utilities to surrounding properties.

2. LEVEL TWO – INTERMEDIATE HOME OCCUPATION

- a. Location: Any home located within a R-2 or R-3 Multiple Family Residential District, any home located within a R-1 Single Family Residential District that fronts and takes access from an arterial roadway and the property upon which the home is located is at least one acre in size or exceeds the minimum lot size for the district in which it is located by at least 100%.
- b. Operator: The operator of a level two intermediate home occupation shall reside in a dwelling on the subject property.
- c. Employees: There shall be no more than three full or part-time employees.
- d. 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 two intermediate home occupation. In the case of a bed and breakfast establishment or country inn, use of the dwelling is not required to be limited to incidental use.
- e. Noise: Between 8:00 a.m. and 5:00 p.m. a level two 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 5:00 p.m. and 8:00 a.m., a level two home occupation shall not create noise that is discernable by the human ear at the property lines.
- f. Equipment and Process Restrictions: A level two home occupation shall not; 1) Create vibrations, heat, glare, dust, odors, or smoke discernable at the property lines; 2) Create electrical or magnetic interference off the premises of the dwelling unit; or 3) Consume utility quantities that negatively impact the delivery of those utilities to surrounding properties.
- g. Outside Storage: No outside storage, display of goods or merchandise or external evidence of a level two home occupation shall occur except as specifically allowed by this subsection.
- h. Traffic: A level two home occupation shall not generate more than 20 vehicle trips per day.
- i. Parking:

- i. No vehicle associated with a level two home occupation shall be stored, parked or repaired on the public rights of way.
- ii. The maximum number of vehicles that are associated with a level two 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.
- iii. A level two home occupation shall not involve the use, parking, storage or repair of any vehicle exceeding one-ton.
- iv. Parking spaces needed for employees or clients of a level two home occupation shall be provided in defined areas of the subject property. Such areas shall be accessible, usable, designed and surfaced for parking.
- j. Access: The subject property must have frontage on and direct access from a constructed public road or constructed and dedicated private roadway. 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, which 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.

3. LEVEL THREE – MAJOR HOME OCCUPATION

- a. Location: Any property within a Commercial Zoning district.
- b. Operator: The operator of a level three home occupation shall reside in a dwelling on the subject property.
- c. Employees: There shall be no more than five full or part time employees.
- d. 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 three home occupation. In the case of a bed and breakfast or country inn the use of the dwelling is not required to be limited to incidental use.
- e. Noise: Between 8:00 a.m. and 5:00 p.m., a level three 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 5:00 p.m. and 8:00 a.m., a level three 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.
- f. Equipment and Process Restrictions: A level three home occupation shall not create vibration, glare, fumes or odors detectable to normal sensory perception off the subject property. A level three 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.

- g. Outside Storage: No outside storage, display of goods or merchandise or external evidence of a level three home occupation shall occur except as specifically allowed by this subsection.
- h. Traffic: A level three home occupation shall not generate more than 30 vehicle trips per day.
- i. Parking: No vehicle associated with a level three home occupation shall be stored, parked or repaired in the public rights-of-way. The maximum number of vehicles that are associated with a level three home occupation shall not exceed five at any time, including but not limited to employee vehicles and client vehicles.
- j. Access: The subject property must have frontage on, and direct access from, a constructed public road.
- k. Permits: A level three home occupation requires a Conditional Use Permit.

H. Exceptions

1. A home occupation taking direct vehicular access to a road with a functional classification of collector, arterial or highway as identified on the Town of Payson Roadway Classification map(s), may exceed any of the standards identified in Subsection 15-02-016.G as deemed appropriate through the Conditional Use Permit process 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:
 - a. 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;
 - b. 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 uses;
 - c. The ability to mitigate impacts by screening, landscaping, building location, building design and other property improvements (for example driveway or road improvements);
 - d. Potential environmental impacts, including effects on air and water quality;
 - e. Provision of adequate and safe access to public roadways.
2. 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.
3. Limitations: The following limitations shall apply to all home occupations:
 - a. Maximum accessory space for a home occupation shall not exceed 3,000 square feet;
 - b. No home occupations are allowed on publicly owned property or trust lands within the Town of Payson.

15-11: Definitions

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 space 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.

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.

Accessory space – Any building space not constructed to residential standards, under the adopted building code of the Town of Payson that is used for the home occupation, including but not limited to an attached garage, detached garage, or shed. Accessory space does not include manufactured dwellings, residential trailers or recreational vehicles.

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.

Incidental Use – The use of no more than 25% of the floor area of a structure or 500 square feet, whichever is less.

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 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.

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.

Abutting Properties – For purposes of section 15-XX, “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”.