



MEMORANDUM

TO: Sarah Selden, Beth St. Amand

FROM: Debra Andreades

SUBJECT: Home Occupations

DATE: June 6, 2012

During the review of proposed code amendments (LU 08-0054), it was the consensus of the Planning Commission to put the amendments related to Home Occupations on hold in order to have a more focused discussion, with consideration of related policies proposed through the Comp Plan update. Both Goals 9 and 10 of the current Comp Plan encourage home occupations along with regulations requiring them to be compatible with the character of the surrounding residential neighborhoods. The Community Development Code implements that goal.

Code amendments that were part of LU 08-0054, proposed to replace the current requirements under which a home occupation may be conducted, with alternate language intended to expand the types of occupations allowed AND give clarity as to what types of occupations are permitted and prohibited. Provisions for compatibility with the surrounding neighbors were retained.

The Commission has had limited conversation on this subject, however, comments to date, indicate that compatibility with neighborhood character is still very important and there is a concern with *how* to measure compatibility. There is also a concern about removing the prohibition on outside use. In a related discussion, the PC was concerned about potential location of home occupations in accessory structures, where the structure is in closer proximity to the neighbor than the zone allows, for whatever reason (prior approval of a variance, non-conforming, etc.).

Below is the current Lake Oswego Code language and the proposed code language from LU 08-0054, with comments by the Commission and comments from staff. Following that is some examples from other jurisdictions. It appears that Portland's distinction between low impact and higher impact home occupations could be one way to create flexibility while maintaining compatibility with neighborhood character. Perhaps higher impact types would only be allowed in high density zones.

Current LOC language:

1. The use does not alter the residential character of the neighborhood nor infringe upon the right of residents in the vicinity to the peaceful enjoyment of the neighborhood.
2. A current and valid business license is maintained.

Reference C.

3. No employees other than family members who reside at the dwelling.
4. No outside storage of goods or materials other than vegetation.
5. No more than 25% of the dwelling is devoted to non-residential use.

Proposed LOC language:

1. The use would not, and once commenced does not, alter the residential character of the neighborhood. Effects that would alter the residential character of the neighborhood include, but are not limited to:

[PC Question: Measuring of “alteration of the residential character” is subjective. What do other jurisdictions do to address the method of determining when home occupations are not compatible with the surrounding residential neighborhood?] See West Linn code, attached.

- a. Noise generated by the home occupation regularly heard off-premises: Examples: auto repair, dog sitting, any noise that violates LOC 34.10.537 or 34.10.539.

[PC Question: This standard seems to be vague. How to measure? For example, what about in-home child care?]

- b. The Home Occupation use generates more than 10 vehicle trips per day (5 round trips per day).

2. Permitted Outside Activities related to the Home Occupation. Only the following uses relating to the home occupation may occur outside of a dwelling or accessory structure:

[Staff comment: One of the major issues in home occupations is the potential (versus actual) off-premises effects. Currently all exterior use is prohibited. This amendment would allow specific exterior use, and incidental exterior use as long as it complies with #1: “does not alter residential character”.]

[PC Question: Commissioner Glisson expressed a concern about *any* outside activity.]

- a. Incidental Use: Incidental outside use that does not alter the residential nature of the premises is permissible, i.e., outside photo location for photographer.
- b. Storage of Materials or Finished Products:
 - i. Raising vegetation, whether in ground or in pots may be located anywhere on the site.
 - ii. Arts and Crafts materials and finished products shall not be located in front of any dwelling or in the front yard.
 - iii. Temporary Storage other than Arts and Crafts materials or finished Products) -- Temporarily stored materials or finished product other than Arts and Crafts, and including stored or harvested vegetation (not in ground or in pots), shall not be located in front of any dwelling or in the front yard; such materials or finished products stored elsewhere shall be well-screened from public rights-of-way, streets, and abutting dwellings and accessory structures.

3. Maximum Floor Area of Home Occupation: The maximum floor area that is exclusively devoted to home occupation use shall not exceed 600 square feet floor area.

[Staff comment: Currently there is a limitation on the percentage of a dwelling that may be used for home occupation, which has been interpreted as a prohibition on the use of accessory structures for home occupation. The result is that a home occupation is prohibited in a detached garage, but permitted in an attached garage. This amendment would remove the primary dwelling / accessory

structure distinction and establish a maximum square footage limitation, regardless of whether in the dwelling or in an accessory structure.]

[PC Question: Should the square foot limitation also have a proportional limitation, in relation to the dwelling space? Staff notes that this is also related to the size of the lot]

4. Non-Resident Persons Employed or Engaged in Home Occupation: No employees or other persons engaged in the home occupation not residing on the site shall use the premises for business purposes.

[Staff comment: This amendment retains the “no non-resident employees” restriction but clarifies that it also includes other “employment relations” – partners, shareholders, LLC members, independent contractors, interns, etc. This conforms with existing interpretation.]

5. Business License. A current and valid business license is maintained, unless exempt under LOC 20.02.025.

[Staff comment: There are 13 exemptions such as city-sponsored activities, garage sales, domestic help, contractors, etc.]

6. Prohibited Businesses; Exceptions.
 - (a) Notwithstanding any other provision of this section, and except as permitted by subsection (b) below, all aspects of the following commercial uses are prohibited as home occupations:
 - i. Auto Repair;
 - ii. Landscaping Service;
 - iii. Construction;
 - iv. Large Appliance Repair, e.g., refrigerator, washers / dryers, stove/oven;
 - v. Furniture Upholstery;
 - vi. Pet Care, Daily (including “Doggy Day Care”); and
 - vii. Business requires a state or federal permit for handling or storage of hazardous materials.

[Staff comment: This listing eliminates the need to make a case-by-case analysis of these types of commercial uses and whether they would affect the residential character of the neighborhood. Another option is to list some of these uses as conditional uses rather than prohibited uses.]

- (b) Exceptions. The following portions of a commercial use prohibited as a home occupation may, nevertheless, be permitted as a home occupation:
 - i. Office and/or bookkeeping portion of a prohibited commercial use prohibited above;
 - ii. The raising and storage of vegetation, for a landscape service business.

In such event, the permitted home occupation portion of the commercial use shall be designated on the business license with the limitation noted. Example: “office/bookkeeping only [Auto Repair or Landscaping Service or Construction.] and/or “vegetation only [Landscape Service]”.

[Staff comment: This allows a part of a prohibited business as a home occupation, such as the office/bookkeeping component of a prohibited business and the vegetation raising component of

a landscaping service.

Other Jurisdictions

City of Seattle

Level of activity is important. There shall be no evidence of the occupation from the exterior of the structure.

City of Portland

There are two types of home occupations: Type A and Type B. Type A is where a resident uses the home as a place of work with no employees and no customers. Example: artist, writers, consultants. Type B is where one employee or customers come to the site. Example: counseling, tutoring, hair styling. They establish performance standards for all home occupations rather than limit uses to a specific list. Compatibility is regulated by a list of prohibited uses: any type of repair or assembly, dispatch centers. Exterior activities and storage are prohibited. No changes internally or externally may be carried out that will make the home appear less residential: i.e. construction of parking areas, commercial lighting, etc.

Type B home occupations are prohibited on sites that already contain an SDU. Type B home occupations are also have certain limits: customers may only visit between 7 am and 9 pm and only 8 customers/clients per day. One employee is allowed as long as there are no customers and customers are allowed as long as there is no employee. Type B home occupation permits are issued for a two year period at which time the applicant must re-apply. Type B must also complete and send out a notice to all properties abutting the site (on the same side of the street) and across the street that would abut the site if the street were not there. If a Type B is revoked, a new permit will not issued to the applicant or the address for 2 years. The maximum noise level is 50 Dba taken at the property lines.

City of Tigard

No more than 3 deliveries per week to the residence by suppliers. No noise, vibration, smoke , dust , odors beyond the property lines. The home occupation must be located entirely within the unit. No on or off – street parking shall be required for the home occupation, other than that normally required for a residence. Prohibited -home occupations: auto body repair, junk and salvage, storage or sale of fireworks, on-going mechanical repair. Have Type I and Type II home occupations similar to Portland.

City of West Linn

A home occupation shall comply with all the following operating standards:

Excerpted

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2. In no way shall the appearance of the residential structure or yard be altered, or the occupation within the residence be conducted in a manner which would cause the premises to differ from its residential character by the use of colors, materials, construction, lighting, show windows, signs, or advertising visible outside the premises to attract customers or clients, other than a sign as permitted per subsection (A)(9) of this section.

3. There shall be no outdoor use or storage of material or mechanical equipment that is not part of the residential use.

4. An accessory building which meets the provisions of Chapter 34 CDC may be used for the home occupation.
5. Any parking generated by patrons shall be accommodated on site.
6. Off-street parking areas with three or more spaces shall be screened by a fence constructed per Chapter 44 CDC specifications, topography, vegetation, or a combination of these methods. Screening vegetation must be in place by the time the applicant submits a home occupation application, or be reasonably expected to provide effective screening within one and one-half years of approval of said application.
7. No equipment or process shall be used in a home occupation which creates noise, odor, smoke, fumes, fallout, vibration, heat, glare, or electrical interference resulting detectable to the normal senses off the lot.
8. No more than three employees, other than the residents, shall be engaged in service on the premises at any given time.

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10. Occupied or unoccupied vehicles associated with the home occupation shall not have engines idling at any time, except during the immediate loading or unloading of cargo, mail, packages or passengers. Vehicles associated with the home occupation shall not be loaded or unloaded between the hours of 7:00 p.m. and 7:00 a.m. Monday through Friday, or between the hours of 6:00 p.m. to 9:00 a.m. on Saturday and Sunday. Other noise-generating machinery associated with conducting a home occupation shall also follow these guidelines.
11. The owner of the business must reside in the primary structure on the premises.
12. Only one vehicle no larger than a three-quarter-ton truck may be used by the occupant, directly or indirectly, in connection with a home occupation. An off-street parking space shall be provided for this vehicle.
13. The use creates no more than eight total vehicle trips per day including employees, all deliveries, and customers. One trip is equal to one vehicle entering the site and exiting the site. Home occupations with pupils or students, such as, but not limited to, dance, music or language classes, are exempt from the vehicle trip limitation. (Ord. 1463, 2000; Ord. 1565, 2008; Ord. 1590 § 1, 2009; Ord. 1606 § 1, 2012)