



# Planning Commission Hearing Staff Report Hearing Date: July 11, 2017

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**ITEM #3\*** The Community Development Department requests a Code Amendment to Chapter 14.41 of the Provo City Code to make various changes to the allowances and requirements of Home Occupations, including but not limited to the addition of certain definitions related to Home Occupations, limitations on promotional meetings, changes related to the number of customers and employees allowed with major home occupations, and the non-allowance for an accessory apartment and a major home occupation to be operated at the same time. City Wide impact. Brian Maxfield (801) 852-6429 PLOTA20180109

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<p>Applicant: Community Development Dept.</p> <p>Staff Coordinator: Brian Maxfield</p> <p>Property Owner: City Wide Application Parcel ID#: n/a Acreage: n/a Number of Properties: n/a Number of Lots: n/a</p> <p><b><u>ALTERNATIVE ACTIONS</u></b></p> <p>1. <b>Continue</b> to a future date to obtain additional information or to further consider information presented. <i>The next available meeting date is July 25<sup>th</sup> at 4:30 P.M.</i></p> <p>2. <b>Deny</b> the requested variance. <i>This action <u>would not be consistent</u> with the recommendations of the Staff Report. The Board of Adjustment should <u>state new findings</u>.</i></p>	<p><b><u>Relevant History:</u></b> A number of recent Major Home Occupations requests have been controversial in their possible impact on their associated neighborhood. In examining the intent of the allowance for Home Occupations, the Municipal Council discussed and recommended amendments to better meet that intent.</p> <p><b><u>Neighborhood Issues:</u></b> None reported to date.</p> <p><b><u>Summary of Key Issues:</u></b> The need to regulate impacts of home occupations in order to maintain the character of residential neighborhoods?</p> <p><b><u>Staff Recommendation:</u></b> <b>Approve</b> the requested text amendment to Section 14.41 of the Zoning Ordinance and as attached in Exhibit A of this report.</p> <p><i>This action <u>would be consistent</u> with the recommendations of the Staff Report.</i></p>
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## **OVERVIEW AND BACKGROUND**

A number of recent Major Home Occupation requests have been controversial in their evaluation of possible impacts on their associated neighborhood. The Municipal Council has since discussed in a Work Meeting, the issues of those Home Occupation requests, especially in light of the Ordinance's stated intent that the "use should be conducted so that neighbors, under normal conditions, would not be aware of its

existence.” Following their discussion, the Council voted to further consider particular amendment recommendations and has now sent this request to the Planning Commission.

Home Occupations have existed in the City’s Zoning Ordinance for more than 50 years. In general, the intent has been to allow business activities within a residence on a limited basis if such activities are secondary to the principal use (residence); comply with adopted standards; and conducted so that neighbors, under normal conditions, would not be aware of its existence.

At one time, all Home Occupations required a public hearing and approval by the Board of Adjustment. In 1993, revisions were made that separated Home Occupations into “Minor” and “Major” categories. Minor Home Occupations were those that could meet the listed conditions and could be approved by the Community Development Director. Major Home Occupations considered an allowance for additional impacts such as a little more intensive use and including a limited number of outside employees. Major Home Occupations do require a public hearing and Planning Commission approval in order to address those additional impacts and imposing conditions to mitigate their possible adverse effect on the neighborhood. However, by State Code, Conditional Use Permits must be approved unless the Board can find the anticipated impact(s) cannot be adequately mitigated through any means or conditions of approval.

This requested text amendment is intended to address and clarify a number of different items and involves such items as definitions of certain terms; limitations on promotional meetings; changes related to the number of customers and employees allowed with major home occupations; the hours in which customers and employees may be on the premises; and the non-allowance for an accessory apartment and a major home occupation to be operated at the same time.

### **FINDINGS OF FACT**

- One principal intent for Home Occupations is the use should be conducted so that neighbors, under normal conditions, would not be aware of its existence.
- Minor Home Occupations meeting the listed conditions of Chapter 14.41 are permitted within residential zones within the City.
- Major Home Occupations can be permitted by the Planning Commission, subject to meeting the requirements of Chapter 14.41 and any conditions imposed by the

Board of Adjustment to mitigate potential impacts that may result from the extended uses listed in Chapter 14.41.

## **CONCLUSIONS**

The proposed amendments work to clarify and better regulate the allowance for Home Occupations in keeping with an intent to prevent or minimize non-residential impacts on the City's residential neighborhoods.

## **RECOMMENDATION**

**Approve** the requested text amendment to Section 14.41 of the Zoning Ordinance and as attached in Exhibit "A" of this report.

## **ATTACHMENTS**

- Exhibit "A" with the proposed text amendments.
- The Municipal Council's Home Occupation Amendments Executive Summary that provides the basis for the requested amendments.

**EXHIBIT "A"**

**Chapter 14.41 Home Occupations.**

- 14.41.010. Purpose and Intent.
- 14.41.020. Home Occupation Permit Required.
- 14.41.030. Procedure.
- 14.41.040. Conditions.
- 14.41.050. Minor Home Occupations.
- 14.41.060. Major Home Occupations.
- 14.41.070. Noncompliance.
- 14.41.080. Appeal.
- 14.41.090. Business License Required.

**14.41.010. Purpose and Intent.**

To encourage the majority of business activities to be conducted in appropriate commercial zones. Business activities may be conducted within a residence on a limited basis if such activities comply with standards of this Section. All home occupations shall be secondary and incidental to the residential use. The use should be conducted so that neighbors, under normal conditions, would not be aware of its existence. Home occupations are a temporary privilege which can be revoked if disruption of the residential neighborhood occurs.

**14.41.015. Definitions.**

For the purposes of this Chapter, the following definitions shall apply

"Customer" means an individual or a single representative of a group or organization, who buys goods or services directly at the premises of a home occupation.

"Employee" means an individual who is either paid or volunteers for work performed in association with a home occupation business.

"Major Home Occupation" means a home occupation that may exceed specific impacts found with a minor home occupation, but where such impacts can be adequately mitigated through adherence to specific conditions included with an approved Conditional Use Permit.

"Minor Home Occupation" means a home occupation where the combined off-site impact of the home-based business and the primary residential use of the property, does not materially exceed the off-site impact of the primary use alone.

**14.41.020. Home Occupation Permit Required.**

To assure compliance with provisions of this Title and to protect the character of residential neighborhoods in the City of Provo, a Home Occupation Permit ~~shall be obtained from the Community Development Department before a dwelling unit in a residential zone may be used for business purposes.~~ **is required as follows:**

(1) A Home Occupation Permit is not required for those home occupations that fully comply with the conditions listed in Section 14.41.040. Provo City Code; qualify as a minor home occupation, or are else otherwise exempted by State Code.

(2) An annual Home Occupation Permit is required for all Major Home Occupations.

48 **14.41.030. Procedure.**

49 The Community Development Department may, upon application, issue a Home Occupation Permit which shall  
50 state the home occupation permitted, the conditions attached thereto, and any time limitations imposed thereon. The  
51 permit shall not be issued unless the Community Development Department is satisfied that the applicant will meet  
52 all of the conditions listed below and that the applicant has agreed in writing to comply with all said conditions.  
53 (Ren 1993-02, Am 2016-08)

54  
55 **14.41.040. Conditions.**

56 Each and every one of the following conditions must be observed at all times by the holder of a Home Occupation  
57 Permit:

58  
59 (1) Persons who are not bona fide residents of the premises shall not be employed on said premises.

60  
61 (2) The home occupation shall be conducted wholly within the structure on the premises and shall not exceed  
62 forty-nine percent (49%) of the total floor area of said structures. The home occupation shall not occupy any area  
63 within the garage, unless the garage still functions for parking, and as long as two (2) parking spaces for residential  
64 use are still available.

65  
66 (3) Promotional meetings for the purpose of selling merchandise, taking orders, or training shall not include more  
67 than 12 attendees at any one meeting, nor be held more than once per month.

68  
69 (4) The home occupation may include the sale of commodities. However, it is the intent that it be limited to items  
70 produced on the premises, or items that are incidental to the service provided, i.e., a beautician who also sells hair  
71 care products to her clientele. Retail sales of products and services are allowed at the home with a maximum of two  
72 (2) customers per hour, and only between the hours of 8:00 a.m. and 9:00 p.m. Sufficient parking area shall be  
73 maintained on-site for customer parking.

74  
75 (5) No sign or advertising shall be displayed on the premises except name plates as permitted by Section  
76 14.38.050(9), Provo City Code.

77  
78 (6) No display of any kind shall be visible from the exterior of the premises.

79  
80 (7) Garage, basement, yard or other similar sales shall not be allowed more than a total of five (5) days in any  
81 calendar year. Such sales do not constitute a home occupation.

82  
83 (8) Only one (1) vehicle may be used in association with the home occupation and shall be garaged or stored  
84 entirely within a building or structure. The vehicle used for the home occupation shall be limited to a maximum  
85 gross vehicle weight rating of fourteen thousand (14,000) pounds. Nor shall a business be permitted that requires  
86 receipt or delivery of merchandise, goods, or equipment by other than a passenger motor vehicle or by parcel or  
87 letter carrier mail service using vehicles typically employed in residential deliveries. No deliveries by semi-  
88 tractor/trailer truck are permitted.

89  
90 (9) There shall be complete conformity with the Provo City Code, fire, building, plumbing, electrical, and health  
91 codes and to all applicable state and city laws and ordinances.

92  
93 (10) The home occupation shall not cause a demand for municipal or utility services or community facilities in  
94 excess of those usually and customarily provided for residential uses.

95  
96 (11) The home occupation shall not alter the residential character of the premises or unreasonably disturb the  
97 peace and quiet, including radio and television reception, of the neighborhood by reason of color, design, materials,  
98 construction, lighting, sounds, noises, or vibrations.

99  
100 (12) Any special condition established by the Community Development Department and made of record in the  
101 Home Occupation Permit, as they deem necessary to carry out the intent of this Section, shall be met.  
102

103 (13) All Home Occupation Permits shall be valid for one (1) year, and may be renewed annually provided there  
104 have been no reported violations, complaints, or detrimental characteristics which may, in the opinion of the  
105 Community Development Department, require termination of said home occupation.  
106

107 (14) Handicapped persons can obtain a waiver of one (1) or more of these conditions through the Zoning  
108 Administrator to allow such persons to become self-sufficient.  
109

110 **14.41.050. Minor Home Occupations.**

111 Home occupations which meet the above standards shall be defined as minor home occupations. In order to  
112 minimize traffic and off-street parking, and to avoid health and sanitation risks from the disposal of medical wastes,  
113 medical, dental, and other health professional offices are specifically excluded as home occupations. Permitted  
114 minor home occupations include, but are not necessarily limited to the following:  
115

- 116 (1) artists, authors, architectural services, advertising;  
117  
118 (2) barber and beauty shops;  
119  
120 (3) consulting services, craft sales;  
121  
122 (4) dance studio, aerobic exercise, music lessons, tutoring and general educational instruction, provided the  
123 number of students is limited to two (2) at a time;  
124  
125 (5) direct sales distribution, desktop publishing;  
126  
127 (6) data processing, computer programming, and service;  
128  
129 (7) family day care (not more than six (6) children);  
130  
131 (8) home crafts;  
132  
133 (9) garden produce;  
134  
135 (10) janitorial services;  
136  
137 (11) insurance sales or broker, interior design;  
138  
139 (12) mail order;  
140  
141 (13) real estate sales, broker, or appraiser;  
142  
143 (14) sales representative; and  
144  
145 (15) contractors, provided there is no outside storage of equipment, and no more than one (1) company vehicle  
146 stored on site.  
147  
148

149 **14.41.060. Major Home Occupations.**

150 "~~Major home occupation~~" means a home occupation which meets the standards listed in Section 14.41.040, Provo  
151 City Code, except as specifically modified by the Community Development Department as provided herein. All  
152 Major Home Occupations shall require the issuance of a Conditional Use Permit as regulated by Section 14.02.040.

153 Pursuant to approval of a conditional use permit, the Community Development Department may authorize an  
154 increase in the intensity of a home occupation, as follows:  
155

156 (1) ~~The number of customers coming to a dwelling unit may range up to six (6) per hour provided sufficient off-~~  
157 ~~street parking is provided.~~ No more than one (1) major home occupation may be in operation at the same location,  
158 and no accessory apartment may be operated concurrently with a major home occupation at the same location.  
159

160 (2) A larger commercial vehicle up to a gross vehicle weight rating of seventeen thousand five hundred (17,500)  
161 pounds may be used, provided it is parked ~~on private property~~ on-site and adequately screened from street view.  
162

163 (3) Outside employees not residing on the premises may be allowed ~~during daytime business the hours (8:00 a.m. — 5:00~~  
164 ~~p.m.)~~ subject to the following conditions of either Subsection (a) or (b):  
165

166 (a) ~~No more than one (1) outside employees at one time for a dwelling unit located on a lot or parcel which is at least~~  
167 ~~eight thousand (8,000) square feet in area. One (1) additional employee~~ A maximum of two (2) employees at any one time  
168 may be allowed for each additional increment of thirty thousand (30,000) square feet in the area of the lot or parcel  
169 properties of 38,000 square feet or greater.  
170

171 (b) ~~As an alternative to Subsection (a), a home occupation that does not bring customers to the premises may have up to~~  
172 ~~three (3) outside employees at one time for a dwelling unit located on a lot or parcel which is at least eight thousand (8,000)~~  
173 ~~square feet in size, provided sufficient off-street parking is provided. One (1) additional employee may be allowed for each~~  
174 ~~additional increment of thirty thousand (30,000) square feet in the area of the lot or parcel.~~ Outside employees may only be  
175 allowed on the premises between the hours of 8:00 a.m. and 5:00 p.m., except when the home occupation does not bring  
176 customers to the premises, employee hours may be extended to 9:00 p.m.  
177

178 (c) Sufficient off-street parking shall be provided and maintained on the premises for employee parking.  
179

180 (4) Promotional meetings for the purpose of selling merchandise, taking orders, or training may be held up to four  
181 (4) times per month, but shall not include more than 12 attendees at any one meeting.  
182

183 (5) ~~An applicant for a Major Home Occupation may forego the fee for a conditional use permit if all the property~~  
184 ~~owners within three hundred (300) feet of the applicant's property sign a petition in support of the home occupation.~~  
185

#### 186 **14.41.070. Noncompliance.**

187 Any Home Occupation Permit shall be revoked by the Community Development Department upon violation of any  
188 requirements of this Chapter, or upon failure to comply with any of the conditions or limitations of the permit,  
189 unless such violation is corrected within three (3) days of receipt of written notice thereof. A permit may be revoked  
190 for repeated violations of the requirements of this Chapter, notwithstanding compliance to the violation notice. (Ren  
191 1993-02, Am 2016-08)

#### 193 **14.41.080. Appeal.**

194 In the event of denial of any permit, or of the revocation thereof or of objection to the limitations placed thereon,  
195 appeal may be made to the Board of Adjustment in accordance with the provisions of Section 14.05.050, Provo City  
196 Code. (Ren 1993-02)

#### 198 **14.41.090. Business License Required.**

199 A Home Occupation Permit is not a business license, and the granting of said permit shall not relieve the permittee  
200 of any other license requirement of the City or of any other public agency.  
201

202 END

## Home Occupation Amendments Executive Summary

- **Definition of Customer**
  - **Problem:** Some home occupation business owners have treated groups, sometimes large ones, as “customers” to comply with the limits on customer visits in the current ordinance.
  - **Solution:** Clarify that “customer” means an individual and not a group.
- **Hours for Customer Visits and for Outside Employees**
  - **Problem:** Residents have been awakened by customers leaving a home business past midnight. Minor home occupations cannot have outside employees and are limited to two customer visits per hour. Major home occupations can have an outside employee and can have up to six customer visits per hour. The current ordinance limits outside employee hours to between 8:00 AM and 5:00 PM. The intent seems to have been to limit the higher impact of major home occupations to daytime operating hours. However, there is currently no corresponding restriction on customer visiting hours.
  - **Solution:** After 5:00 PM, limit customer visit frequency to a major home occupation to be the same frequency as is allowed for minor home occupations – up to two per hour. This limits higher impacts from major home occupations due to employees or customer visits to the same daytime hours. Allow customer visits up to two per hour from 8:00 AM to 9:00 PM for both minor and major home occupations. However, in the case where the business does not have customer visits, allow outside employees until 9:00 PM instead of 5:00 PM. Currently up to three outside employees are allowed if the business has no customer visits. To offset the impact from allowing later hours in this case, and to limit the size of a business operating from home, change the limit to two outside employees instead of three.
- **Accessory Apartments and Home Occupations**
  - **Problem:** Accessory apartments and home occupations can both have traffic and parking impacts.
  - **Solution:** When a home has an accessory apartment, do not allow a major home occupation.
- **Off-street Parking for Business Related Vehicles**
  - **Problem:** When parking is not available at the home business, customers park in front of other homes. When on-street parking is not available nearby, they have sometimes double parked in the street to drop off or pick, creating a safety hazard.
  - **Solution:** Require that home occupations provide sufficient off-street parking for any business related vehicles. However, it provides Community Development with a tool to insure that sufficient off-street parking is available in problem situations. For example, they could place restrictions related to off-street parking availability on a major home occupation permit application.
- **Definition of Employee**



- **Problem:** A business has had multiple outside employees and justified it on the basis that some of them were volunteers.
- **Solution:** Clarify that a volunteer worker is also considered an employee.
- **Promotional Meetings**
  - **Problem:** There is currently no limit in the Code on the number of people that may attend a promotional meeting – once a month for minor home occupations or four times a month for major home occupations.
  - **Solution:** Limit the maximum number of customers attending a promotional meeting to 12.
- **Conditional Use Permit Fee Waiver**
  - **Problem:** Currently the Code allows the \$900 conditional use permit fee for a major home occupation to be waived if all property owners within 300 feet sign a petition in support of the home occupation. A majority of major home occupation permit applications don't use this petition process – either because the applicant doesn't want to bother with it or because someone refuses to sign. Even when successful, neighbors may just be signing so that the applicant can get the fee waived. They may not be agreeing to the impacts of the business and they often won't even understand at that point what those impacts will be. Success in getting the fee waived may have more to do with how well known and liked the applicant is and how persistent they are rather than the nature of the business. A successful petition has no further significance after the fee has been waived though it may create a false impression with the applicant that every person who signed will be OK with the ongoing impacts of the business.
  - **Solution:** Eliminate the petition process for getting the major home occupation permit fee waived.