



Provo City Planning Commission

Report of Action

January 24, 2018

ITEM 4* John & Lara Johnson request Zoning Ordinance amendments to Section 14.41 Major Home Occupations to increase the number of students from 6 to 16 and to extend the hours of operation from 5:00 pm to 9:00 pm. *City-Wide Impact.* 17-0025OA, Robert Mills, 801-852-6407

The following action was taken by the Planning Commission on the above described item at its regular meeting of January 24, 2018:

RECOMMENDATION FOR DENIAL

On a vote of 5:0, the Planning Commission recommended that the Municipal Council deny the above noted application.

Motion By: Shannon Ellsworth

Second By: Andrew Howard

Votes in Favor of Motion: David Anderson, Shannon Ellsworth, Andrew Howard, Edward Jones, and Brian Smith

David Anderson was present as Acting Chair.

- Includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report, with any changes noted; Planning Commission determination is generally consistent with the Staff analysis and determination.

RELATED ACTIONS

The applicant has also applied for a Conditional Use Permit for the proposed major home occupation. An administrative hearing was held on January 3, 2018, but was continued to await the outcome of the proposed ordinance text amendment. Once a decision on the amendment is made, the hearing will be reconvened.

STAFF PRESENTATION

The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations. Key points addressed in the Staff's presentation to the Planning Commission included the following:

- Staff explained that the purpose of a home occupation is intended to be incidental to the primary use of the dwelling on the site.
- Staff explained the difference between minor and major home occupations.
- Staff noted that the proposed amendment would apply Citywide and that the example of the applicant's proposed use was only used for illustrative purposes.
- Staff recommended the Planning Commission forward a recommendation to deny the proposed amendment because of the likely impacts to existing residential communities.

NEIGHBORHOOD AND PUBLIC COMMENT

- This item was City-wide or affected multiple neighborhoods. Three neighborhood chairs and one vice-chair who were present spoke in opposition to the proposed amendment citing concerns with the encroachment of commercial uses into residential neighborhoods, the change in the nature of the neighborhood, traffic and parking, and the proliferation of major home occupations in neighborhoods.

CONCERNS RAISED BY PUBLIC

One member of the public emailed testimony in support of the proposal and that testimony was read into the record by Staff.

APPLICANT RESPONSE

The applicant spoke in support of the amendment stating that adjacent and nearby residents have signed a petition in support of their school. They also pointed out that their home, being a corner lot on a collector road, was especially well suited for a major home occupation.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- All Commission members expressed concerns with the proposed amendment and the propensity for negative impacts that such a change would create.
- All Commission members expressed that they could not support the proposal.



Director of Community Development

See Key Land Use Policies of the Provo City General Plan, applicable Titles of the Provo City Code, and the Staff Report to the Planning Commission for further detailed information. The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action.

Legislative items are noted with an asterisk (*) and require legislative action by the Municipal Council following a public hearing; the Planning Commission provides an advisory recommendation to the Municipal Council following a public hearing.

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees, to the Community Development Department, 330 West 100 South, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS



**Planning Commission
Staff Report
Ordinance Amendment
Hearing Date: January 24, 2018**

ITEM 4* John & Lara Johnson request Zoning Ordinance amendments to Section 14.41 Major Home Occupations to increase the number of students from 6 to 16 and to extend the hours of operation from 5:00 pm to 9:00 pm. **City-Wide Impact.** 17-0025OA, Robert Mills, 801-852-6407

<p>Applicant: John and Lara Johnson Staff Coordinator: Robert Mills Property Owner: Same as Applicant Parcel ID#: 356940151 Current General Plan Designation: Residential Current Zone: SDP5 Acreage: 0.26 acres (11,325 sq.ft.) Number of Properties: 1 *Council Action Required: Yes Related Application(s): 17-0013CUP</p> <p><u>RECOMMENDED ACTION:</u> 1. Recommend Denial of the proposed ordinance amendment. <i>This action <u>would be consistent</u> with the recommendation of the Staff Report. Any additional changes should be stated with the motion.</i></p> <p><u>ALTERNATIVE ACTIONS</u> 1. Recommend Approval of the proposed ordinance amendment. <i>This would be <u>a change</u> from the Staff recommendation; the Planning Commission should <u>state new findings</u>.</i> 2. Continue to a future date to obtain additional information or to further consider information presented. <i>The next available meeting date is February 14, 2018, at 5:30 p.m.</i></p>	<p>Current Legal Use: Single-family dwelling.</p> <p>Relevant History: The property is located in the Broadview Shores Development and contains a newly-built home.</p> <p>Neighborhood Issues: The neighborhood has expressed support of an art school offering dance, music, and acting classes which conforms to the current standards of the Provo City Code relating to a major home occupation.</p> <p>At a recent administrative hearing for a Conditional Use Permit for the proposed use, the area representative and other neighbors expressed concern regarding the proposed ordinance amendment which would increase the number of students per hour from six (6) to sixteen (16), as well as the increase in hours permissible for outside instruction.</p> <p>Additional concerns regarding adequate parking and a change in the residential nature of the neighborhood were also expressed as concerns.</p> <p>Summary of Key Issues:</p> <ul style="list-style-type: none">- The request will add a provision that allows a maximum of sixteen (16) students per hour to come to a dwelling unit for instructional classes.- The request will extend business hours for outside employees from 5:00 p.m. to 9:00 p.m. <p>Staff Recommendation: The proposed ordinance text amendment has the potential to create significant negative impacts to not only the applicant's neighborhood, but citywide. Staff recommends the Planning Commission forward a recommendation of denial to the Municipal Council.</p>
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OVERVIEW

The applicants are requesting an ordinance text amendment to Section 14.41.060 of the Provo City Code, relating to Major Home Occupations. Provo City Code currently allows a maximum of six (6) students (customers) per hour to come to a dwelling unit. Code also allows one additional employee not residing at the residence during business hours (8:00 a.m. to 5:00 p.m.) for lots which have a minimum of 8,000 sq. ft.

The applicants propose amending the ordinance to allow a maximum of sixteen (16) students per hour to attend instructional classes and to extend the business hours wherein an outside employee may offer instruction at a dwelling from 5:00 p.m. to 9:00 p.m.

The applicants have applied for a Conditional Use Permit to allow a major home occupation; however, the administrative hearing wherein their application was discussed was continued because of this request for additional students and expanded business hours. The administrative hearing will be reconvened once a decision on the subject amendment has been given.

FINDINGS OF FACT

1. The subject property is located in a single-family dwelling in the SDP-5 Zone.
2. Single-family dwellings in the SDP-5 Zone are permitted to have home occupations as an accessory use (Section 14.49.030(5)(d)).
3. Minor Home Occupations subject to compliance with specific conditions (Section 14.41.040).
4. Major Home Occupations also have specific conditions that require compliance (Section 14.41.060).
5. With both a Minor and a Major Home Occupation, the impact on the neighborhood is to be so minor that under normal circumstances the surrounding neighbors would not be aware of its existence (Section 14.41.010).
6. The proposed ordinance text amendment would change the number of customers/students allowed to come to a dwelling unit from six (6) per hour to sixteen (16) per hour.
7. The proposed ordinance text amendment would extend the hours an outside employee, not residing in the dwelling, may perform work from a current ending time of 5:00 p.m. to a new ending time of 9:00 p.m.
8. The proposed ordinance text amendment is applicable citywide in all zoning districts and to all Major Home Occupation Uses.

STAFF ANALYSIS

1. Provo City Code Section 14.02.020(2) sets forth the following guidelines for consideration of ordinance text amendments:

Before recommending an amendment to this Title, the Planning Commission shall determine whether such amendment is in the interest of the public, and is consistent with the goals and policies of the Provo City General Plan. The following guidelines shall be used to determine consistency with the General Plan: **Responses in bold.**

- (a) *Public purpose for the amendment in question. **The public purpose is not served by the proposed ordinance text amendment because it increases the pressure of commercial activity on residential neighborhoods.***
- (b) *Confirmation that the public purpose is best served by the amendment in question. **Commercial uses, and the impacts associated with them, are best suited for commercially zoned areas or areas planned for mixed-use development. The proposed text amendment increases the encroachment of commercial activities into residential areas. The increase in the number of customers/students coming to a dwelling increases the pressure on traffic flows, available on-street parking, and can create potentially dangerous situations for students or customers frequenting a dwelling that is not equipped or design to handle that amount of activity.***
- (c) *Compatibility of the proposed amendment with General Plan policies, goals, and objectives. **Protecting one-family neighborhoods while meeting the need for affordable, owner-occupied dwellings is a goal of the General Plan that would be strained by the adoption of this proposed ordinance text amendment. The current code allows for home occupations which can help homeowners with the cost of housing expenses; however, the proposed amendment increases the intensity of a typical home occupation to that of a commercial business. This can make one-family neighborhoods more vulnerable to redevelopment into more intense land uses and can also artificially increase home values to a non-affordable level.***
- (d) *Consistency of the proposed amendment with the General Plan's "timing and sequencing" provisions on changes of use, insofar as they are articulated. **The proposed amendment does not affect the timing or sequencing of the General Plan.***
- (e) *Potential of the proposed amendment to hinder or obstruct attainment of the General Plan's articulated policies. **The proposal would obstruct attainment of some General Plan policies as noted above.***
- (f) *Adverse impacts on adjacent land owners. **The proposed amendment greatly increases the potential intensity of a major home occupation which can create adverse impacts on adjacent land owners. The proposal would***

dramatically increase the number of students/customers coming and going to a residential dwelling which would likely negatively affect surrounding property owners.

- (g) *Verification of correctness in the original zoning or General Plan for the area in question. **The zoning and General Plan are correct.***
- (h) *In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies.*

CONCLUSIONS

It is important to note the stated Purpose and Intent of the Home Occupation Chapter of the Code which states the following: "Business activities may be conducted within a residence on a limited basis 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." Staff feels the proposed amendment would exceed the intent of the home occupation provisions and would become a detriment to surrounding neighbors.

As an example, the applicants have created a website where potential students can sign-up for classes. The applicants are offering a total of 87 classes in the month of January. Under current code allowances, the number of students coming and going from the applicants' dwelling could be as high as 522 students per month (87 x 6). Under the proposed amendment, that number could increase to 1,392 students per month. That is substantial business flow.

Also, the website lists 10 instructors for the various classes. Only one outside employee at a time is permitted with a Major Home Occupation (14.41.060(3)(a)). Even if only one instructor teaches at a time there would still be overlap with arriving and departing instructors. This impacts both parking and traffic flow. Eighty-seven classes per month and 10 outside employees does not seem consistent with a home occupation that under normal conditions, the neighbors would not be aware of it.

Increasing the number of clients per hour will also increase the need for off-street parking. While no specific ratio is given in the Code, Section 14.41.060(1) requires sufficient off-street parking. It is unlikely that many single-family homes in Provo would have sufficient off-street parking to accommodate 16 clients at time. While this applicant refers to students of a dance school, the amendment proposed would also increase the number of clients per hour for an insurance agent or a real estate agent, which are also permitted home occupations.

Staff believes that the current regulations and limitations on Home Occupations strike a good balance between protecting neighborhoods while allowing limited commercial uses in residential

zones. Staff feels the proposed amendment would allow any dwelling to become a Major Home Occupation with impacts that would no longer be in balance with residential neighborhoods.

STAFF RECOMMENDATION

Based on the foregoing Findings of Facts and Conclusions, Staff recommends the Planning Commission forward a recommendation to deny the proposed ordinance text amendment to the Municipal Council.

ATTACHMENT

1. Proposed Text Amendment

ATTACHMENT 1 – PROPOSED TEXT AMENDMENT

14.41.060. Major Home Occupations.     ...

"Major home occupation" means a [home occupation](#) which meets the standards listed in Section [14.41.040](#), Provo City Code, except as specifically modified by the Community [Development](#) Department as provided herein. Pursuant to approval of a [conditional use](#) permit, the Community [Development](#) Department may authorize an increase in the intensity of a [home occupation](#), as follows:

- (1) The number of [customers](#) coming to a [dwelling unit](#) may range up to six (6) per hour, provided sufficient off-street parking is provided.
- (2) A larger commercial vehicle up to a gross vehicle weight rating of seventeen thousand five hundred (17,500) pounds may be used, provided it is parked on private [property](#) and adequately screened.
- (3) Outside employees not residing on the premises may be allowed during [daytime](#) business hours (8:00 a.m. - 5:00 p.m. **9:00 p.m.**) subject to the conditions of either Subsection (a) or (b):
 - (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 eight thousand (8,000) square feet in [area](#). One (1) additional employee may be allowed for each additional increment of thirty thousand (30,000) square feet in the [area](#) of the [lot](#) or [parcel](#).
 - (b) As an alternative to Subsection (a), a [home occupation](#) that does not bring [customers](#) to the premises may have up to 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) square feet in size, provided sufficient off-street parking is provided. One (1) additional employee may be allowed for each additional increment of thirty thousand (30,000) square feet in the [area](#) of the [lot](#) or [parcel](#).
- (4) Promotional meetings for the purpose of selling merchandise, taking orders, or training may be held up to four (4) times per month.
- (5) An applicant for a Major [Home Occupation](#) may forego the fee for a [conditional use](#) permit if all the [property](#) owners within three hundred (300) feet of the applicant's [property](#) sign a petition in support of the [home occupation](#). (Enacted 1993-02, Am 1995-37, Am 2005-38, Am **2016-08**)
- (6) The number of students coming to a dwelling unit for instructional classes may range up to sixteen (16) per hour.