

Mayor
Kenneth Romney

**City Engineer/ Land
Use Administrator**
Kris Nilsen

**City Recorder/
Community
Development**
Cathy Brightwell

WEST BOUNTIFUL PLANNING COMMISSION

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Chairman
Alan Malan

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Dell Butterfield
Laura Mitchell
Corey Sweat
Dennis Vest

THE PLANNING COMMISSION WILL HOLD A REGULAR MEETING AT 7:30 PM ON TUESDAY, JULY 25, 2023, AT THE CITY OFFICES.

1. Prayer/Thought – Commissioner Malan;
Pledge of Allegiance – Commissioner Sweat.
2. Confirm Agenda.
3. Discuss Home Occupation Business Regulations and Uses.
4. Consider Meeting Minutes from June 27, 2023.
5. Staff report
 - a. Engineering (Kris Nilsen)
 - b. Community Development (Cathy Brightwell)
6. Adjourn.

This agenda was posted on the State Public Notice website (Utah.gov/pmn), the city website (WBCity.org), emailed to planning commissioners, and provided to the Davis Journal on July 21, 2023, by Cathy Brightwell, City Recorder.

MEMORANDUM



TO: Planning Commission

DATE: July 20, 2023

FROM: Cathy Brightwell, Kris Nilsen

RE: Home Occupation Business License Uses

The planning commission began reviewing home occupation uses at its June 9, 2023, meeting and provided initial comments to staff. The attached exhibit incorporates those comments and provides a basis for continued discussion.

Background

The city council has asked the planning commission to review zoning and home occupation regulations and propose recommendations to eliminate conflicts. They suggest a determination of the types of businesses that can be allowed as home occupations and those that should be prohibited.

The city's commercial zones list uses that are permitted, conditional, and prohibited. Residential zones do not currently exclude any businesses from consideration for home occupations. If it is determined that a home occupation business may conflict with the intent of the Home Occupation regulations without imposing additional conditions, a conditional use permit review by the planning commission is required. In some cases, this process satisfactorily addresses situations where businesses can be successful and not negatively impact the neighborhood, but there are some businesses that should not qualify as home occupations based on traffic, parking, noise, safety, health, and visual effects, etc.

Additionally, a recent conflict was found that restricts home occupations from being conducted in a garage, whether attached or detached. The definition of home occupation in WBMC 17.04 states, *"...The home occupation shall not involve the use of any accessory building, either attached or detached, or yard space or activity outside the main building or use of more floor area than the equivalent of 15% of the main floor area..."*

WBMC 5.28.010 – Home Occupations, is defined as *"...any occupation conducted within a dwelling and carried on only by persons residing in the dwelling, which is clearly incidental and secondary to the use of the dwelling and for which a home occupation license has been issued..."*

Section 040.G of the Home Occupation ordinance also states, *"The home occupation must be operated entirely within the approved dwelling, except that 25% of a garage or accessory structure on the same property as the dwelling may be used, so long as it does not change the residential character of the lot..."*

In an attempt to clarify regulations applied to home occupations, the following steps can be taken.

1. Clarify and match the definitions in WBMC 17.04.030 and 5.28.010.
2. Determine specific uses that are permitted, conditional, and prohibited as home occupations. Staff reviewed ordinances from surrounding cities and found that many include a list of prohibited uses. After our review, we have identified several types of businesses that the city may want to prohibit from becoming home occupations, as shown on the attached exhibit. These uses, by nature of the investment or operation, have a pronounced tendency once started to increase beyond the limits permitted for home occupations and thereby impair the use and value of a residentially zoned area for residential purposes.
2. Make whatever other changes to Title 17 and Title 5 to eliminate conflicts and provide clarity to applicants and staff to better manage the home occupation process.

The attached proposal is intended for further review and discussion.

WBMC 17.04.030 Definitions

"Home occupation" means an occupation of a person which is carried on by that person and/or others within the same family entirely within the dwelling unit in which the person or persons reside and which occupation is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the appearance, character, or condition of the dwelling or of the neighborhood. The home occupation shall not involve the use of any accessory building, either attached or detached, or yard space or activity outside the main building or use of more floor area than the equivalent of fifteen (15) percent of the main floor area of the dwelling unit, nor shall it involve the installation in the dwelling of special equipment and/or fixtures, and plumbing or electrical wiring or such special fixtures or equipment which are not ordinarily or customarily used in a dwelling; provided, however, that outside private swimming pools may be used for swimming instruction if the instruction is given only by members of the family related by blood, marriage or adoption who are residing within the dwelling. Neither shall a home occupation involve the use of any part of a dwelling for which, by reason of any state, federal or local law or ordinance, special or extra entrances or exits, or special rooms are required as a prerequisite condition to the operation of such use or for which such laws or ordinance require a license or permit. The planning commission may impose additional conditions pursuant to a conditional use permit.

WBMC 5.28 HOME OCCUPATIONS

5.28 Home Occupations

5.28.010 Definitions

5.28.020 Purpose; License Required

5.28.030 Application For License

5.28.030 Specific Businesses Prohibited

5.28.040 Requirements

5.28.050 Exemptions To License

5.28.060 Noncompliance; Revocation And Suspension Of Permit

5.28.070 Home Occupation Business License Renewal And Delinquency

5.28.080 License Not Transferrable

5.28.010 Definitions (definition needs to match 17.04.030)

"Home occupation" means any occupation conducted within a dwelling and carried on only by persons residing in the dwelling, which is clearly incidental and secondary to the use of the dwelling and for which a Home Occupation Business License has been issued by West Bountiful City.

5.28.020 Purpose; License Required

The purpose of this chapter is to protect the residential character and lifestyle of residential zones within West Bountiful City and ensure that home occupations remain secondary, incidental, and accessory uses within the dwelling and that any nuisance created by a home occupation is prevented. To ensure compliance with this chapter, a Home Occupation Business License must be obtained from West Bountiful City before a person may use any part of a dwelling in a residential zone for a home occupation. Under certain circumstances provided in Section 5.28.030, a conditional use permit must also be obtained.

Home occupations shall not be licensed, approved, or conducted without the written consent of the property owner.

5.28.030 Application For License

- A. A Home Occupation Business License Application may be obtained from the city offices or from the city website. Each application shall be accompanied ~~with~~^{by} payment of the business license fee as provided in 5.04.040. It is unlawful for any person to provide false information to the city in relation to the application for, issuance of, or continuation of, a business license, or to knowingly cause or permit the same to be done.
- B. The applicant shall give written notice of the nature and description of the home occupation to all property owners within three hundred (300) feet of the exterior boundaries of the property upon which the home occupation is to be conducted. Evidence of the required notice must be supplied to West Bountiful City as part of the Home Occupation Business License Application.
- C. Except as provided in subsection D, the City Recorder may issue the Home Occupation Business License when:
 - 1. The requirements of ~~5.28.040~~ **this section** have been satisfied; or
 - 2. If a conditional use permit is required from the Planning Commission, the permit has been issued, the conditions of that permit have been satisfied, and the applicant has agreed to the conditions in writing.
- D. Notwithstanding subsection C, the applicant must also apply for a conditional use permit ~~and pay the application fee~~ for review and approval by the Planning Commission under Chapter 17.60 if any of the following apply:
 - 1. The home occupation requested conflicts with the minimum requirements provided in Section 5.28.060;
 - 2. The City Recorder determines that approval of the application may conflict with the intent of this chapter without imposing additional conditions;
 - 3. **The specific business use is listed in Section 5.28.040; and.**
 - 4. **The applicant or City receives a notice of protest to the application; or**
 - 5. ~~The Home Occupation Business License Application is for a day care, nursery, or preschool, which must follow Utah Department of Health regulations for child day care including, but not limited to, a background check.~~

5.28.040 Specific Businesses to be Conditional

Notwithstanding any provision of this chapter to the contrary, the following uses are conditional, and a conditional use permit must be approved by the planning commission prior to issuance of a business license.

- 1. ~~The Home Occupation Business License Application is for~~ **A day care, nursery, or preschool, which must follow Utah Department of Health regulations for child day care including, but not limited to, a background check.**
- 2. ~~??~~ **Hairstylist, barber, aesthetic or esthetician services, or massage therapy, limited to single-chair.**
- 3. ~~??~~ **Contractors, landscapers, tree services, and trucking businesses, more than office only.**
- 4. ~~??~~ **Group instructional services such as music, art, dance, yoga, etc.**
- 5. ~~??~~ **Professional or home office facilities where business or meetings with customers and clients are conducted on-site.**
- 6. **Other occupations that are demonstrated to be substantially similar to the foregoing.**

5.28.050 Specific Businesses Prohibited

Notwithstanding any provision of this chapter to the contrary, the following uses cannot qualify as home occupations:

1. Motor vehicle sales, rentals, and outdoor storage of vehicle inventory; (cars, trucks, diesel)- (ok?)
2. Auto repair, bodywork, painting, glass replacement, or detailing. (more discussion needed)
3. Small engine repair.
What about boats, motorcycles, snowmobiles, recreation vehicles, and similar motor or engine-operated equipment;
4. ~~Major appliance repair (washers, dryers, refrigerators, etc.);~~ (strike)
5. Towing and trucking, except where on-site operations are limited to office-related functions; (more discussion needed)
- 6.. Furniture or cabinet making
7. ~~Welding or machine shop;~~ (strike)
8. ~~Funeral Chapels and Mortuaries;~~ (strike)
9. Gifts Shops;
10. Hairstylist, barber shop, aesthetic or esthetician services, more than single-chair.
10. Restaurants, including Bed and Breakfast businesses.
11. Kennels (except as permitted in the A-1 zone), ~~in-home~~ veterinary services, or animal day-care; (strike in-home, clarify office use only)
12. Porta-Potty businesses (added)
13. Sexually-oriented businesses; (state law applies, but ok to leave in)
14. Retail tobacco specialty businesses; (city and state law applies, but ok to leave in)
15. Retail e-cigarette specialty businesses; (city restrictions and state law applies, but ok to leave in)
16. Medical Cannabis pharmacy; (city restrictions and state law applies, but ok to leave in)
17. ~~Any business that is demonstrated to be substantially similar to the prohibited uses described above; and~~ (strike)
18. Any business that produces or uses hazardous waste or chemicals.
19. Any business that is prohibited in the City's commercial and industrial zones. (ok)

5.28.060 Requirements

1. A person who is not a resident of the dwelling shall not be employed to work on the premises.
2. The home occupation must be clearly incidental and secondary to the use of the dwelling or structure in which it is located and may not change its purpose or character.
3. The home occupation shall not involve the use of any part of a dwelling or structure for which by reason of state, federal or local law or ordinances, special or extra entrances or exits or special rooms are required as a prerequisite condition to the operation of such use or for which said laws or ordinances require a license or permit, except as approved by the Planning Commission.
4. More than one Home Occupation Business License may be issued ~~if the additional businesses will function as one business operation and~~ if after review, it is specifically determined that the total of all businesses will not have an impact on the community greater than one business.
5. The home occupation shall not involve the use of more than the equivalent of fifteen (15) percent of the ~~main-used~~ floor area of the dwelling, nor involve the installation of special equipment and/or fixtures, plumbing or electrical wiring for such special fixtures or equipment which are not ordinarily or customarily used in a dwelling, unless otherwise approved by the Planning Commission.
6. The home occupation must be operated entirely within the approved dwelling, except that 25% of a garage or accessory ~~building or~~ structure on the same property as the dwelling may be used, so long as it does not change the residential character of the lot or would otherwise be contrary to the purpose of this chapter.

7. Inventory or supplies may not occupy more than fifty (50) percent of the permitted area. No storage of merchandise, equipment, or materials shall occur outside the home or outside an approved garage or accessory structure.
8. Additional conditions may be imposed by the Planning Commission if the garage or accessory structure is to be used for:
 - a. Storage of chemicals or tanks; or
 - b. Storage of equipment or vehicles.
9. If a home occupation is authorized for a garage or accessory structure, off-street parking arrangements in compliance with this title must exist for any personal vehicles owned and/or operated by the applicant.
10. If a garage is used for a home occupation, minimum space shall be maintained for at least one vehicle (for a 1-car garage) or for 2 personal vehicles (for a garage designed to accommodate 2 or more automobiles). Off-street parking will be provided for both personal vehicles and customers.
- ~~11. A home occupation shall not involve the use or parking of equipment or motor vehicles having a gross weight of twelve thousand (12,000) pounds or more at the residence.~~
12. With the exception of drop-offs or pick-ups associated with an instructional occupation, on-street parking at any location other than directly adjacent to the approved site is prohibited.
13. Yard space may not be used for home occupation activities, except:
 - a. Outside private swimming pools may be used for swimming instruction if the swimming instruction is given by a bona fide resident of the dwelling.
 - b. Yard space may be used for day care provided the yard is entirely fenced.
 - c. Yard space may be used for other similar activities that will not alter the residential nature of the neighborhood in which the home occupation will be conducted. In no event shall outdoor storage be permitted in relationship to the Home Occupation Business License.
14. Hours of operation shall be limited to the hours of 7:00 am and 10:00 pm, unless shorter hours are set by the planning commission.
15. The home occupation must comply with all fire, building, plumbing, electrical and health codes and all federal, state and local laws.
16. The home occupation may not cause or create a demand from municipal or utility services or community services, including traffic, in excess of those usually and customarily provided for in residential uses. Home occupations which will generate additional traffic or parking in excess of those usual and customary residential uses require Planning Commission approval.
17. The home occupation may not be a nuisance or cause undue disturbance to the neighborhood.
18. The home occupation may not alter the residential character of the premises or unreasonably disturb the peace and quiet, including radio and television reception, of the neighborhood by reasons of color, design, materials, construction, lighting, odors, sounds, noise or vibrations.

19. Merchandise, goods, or customer services may not be advertised or otherwise visible from the exterior of the building in which the home occupation is operated.
20. Signs, advertising or displays of any kind ~~may~~shall not be visible from the public streets or from the exterior boundaries of the property on which the home occupation is conducted.
21. The home occupation shall be operated in a manner that complies with any special conditions established by the Planning Commission and made part of the record in connection with the application for a conditional use permit, as the Planning Commission deems necessary to carry out the provisions and intent of this chapter and Chapter 17.60.
22. Home occupations requiring State or Federal licensing must be in compliance with all State and Federal regulations before a Home Occupation Business License ~~will be~~is issued.

5.28.070 Exemptions To License

The following uses are exempt from the provisions of this chapter:

1. Sale of goods or services by City residents age 14 and under which sale of goods or services does not conflict with other sections of this Code;
2. Temporary home occupations such as garage sales, yard sales, or craft boutiques that occur not more than four (4) times a year with each event lasting not more than seventy-two (72) hours;
3. Promotional meetings for the purpose of taking orders for merchandise, by invitation only, which occur not more than once per month;
4. Community/neighborhood fund raisers which are sponsored and/or approved by City staff;
5. Any person engaged in business for solely religious, charitable or other type of strictly nonprofit purpose who is tax-exempt in such activities under the laws of the United States and the State of Utah;
6. Any person engaged in a business specifically exempted from municipal taxation and fees by the laws of the United States or the State of Utah;
7. Any person selling, offering for sale, or taking orders for or soliciting the sale of any farm products, but not including dairy products, actually produced, raised or grown by the person so selling, offering for sale or taking orders for, or soliciting the sale of any such farm products; and
8. Other exemptions as specifically approved in writing by the City Council.

5.28.080 Noncompliance; Revocation And Suspension Of Permit

The City Recorder may revoke or suspend, or decline to renew, a Home Occupation Business License for a violation of any of the requirements of this chapter, or for failure of the licensee to comply with the conditions of the license. The Planning Commission may revoke, suspend or modify the conditional use permit associated with a Home Occupation Business License for violation of any of the requirements of this chapter or Chapter 17.60, or the conditions of the permit; or for failure of the permit holder to maintain the Home Occupation Business License. The Planning Commission may suspend the permit temporarily to give the permit holder a specified reasonable period of time to cure deficiencies. If such deficiencies are not cured by the specified period of time, the Planning Commission shall revoke the conditional use permit associated with the Home Occupation Business License. During the period of suspension, the Planning Commission may impose any restrictions or conditions upon the permit holder, including cessation of all activities.

5.28.090 Home Occupation Business License Renewal And Delinquency

A Home Occupation Business License is subject to annual renewal, with the license year being the calendar year.

A Home Occupation Business License shall be renewed annually provided there have been no confirmed violations or detrimental effects which may, in the opinion of the zoning administrator, require termination, or planning commission review if the home occupation was approved as a conditional use.

~~All license fees provided herein shall be due and payable on or before January 15th of any calendar year, or before commencing a new business. In the event any fee is not paid on or before such date, a penalty of fifty (50) percent of the amount due shall be imposed and shall become a part of the license fee imposed by this chapter. The date of delinquency and the amount of the penalty may be amended periodically by resolution of the City Council provided that the amended date and penalty shall be prospective only, effective the next calendar year.~~

5.28.110 License Not Transferrable

No license granted or issued under the provisions of this chapter shall in any manner be assignable or transferable or authorize any person other than the licensee named therein to do the business specified in the license.

PENDING – NOT APPROVED

Posting of Agenda - The agenda for this meeting was posted on the State of Utah Public Notice website, on the West Bountiful City website, and at city hall on June 23, 2023, per state statutory requirement.

Minutes of the Planning Commission meeting of West Bountiful City held on Tuesday, June 27, 2023, at West Bountiful City Hall, Davis County, Utah.

Those in Attendance:

MEMBERS ATTENDING: Chairman Alan Malan, Commissioners Corey Sweat, Dennis Vest, Dell Butterfield, Laura Mitchell, and Council member Kelly Enquist.

MEMBERS EXCUSED:

STAFF ATTENDING: Kris Nilsen (City Engineer), Cathy Brightwell (Recorder), and Debbie McKean (Secretary).

VISITORS: Jeremy and Katie Broderick

The meeting was called to order at 7:30 pm by Chairman Malan.

1. **Prayer by Commissioner Mitchell**
Pledge of Allegiance- Commissioner Malan

2. **Confirm Agenda**

Chairman Malan reviewed the proposed agenda. **Corey Sweat moved to approve the agenda as presented. Dell Butterfield seconded the motion. Voting was unanimous in favor among all members present.**

3. **Public Hearing to Consider a Request from Jeremy Broderick, 1451 North 950 West, to change the Way Accessory Structure Heights are Measured.**

Commissioner packets included a memorandum dated June 23, 2023, from Kris Nilsen and Cathy Brightwell regarding a **Request from Jeremy Broderick, 1451 North 950 West, to change the Way Accessory Structure Heights are Measured** including a height chart comparison as currently proposed, application packet from Mr. Broderick stating the reason for the request, diagrams explaining the effects of the request, and descriptive diagrams prepared by staff.

Action Taken: Corey Sweat moved to open the public hearing at 7:35 pm. Laura Mitchell seconded the motion and voting was unanimous in favor.

Kris Nilsen introduced the request from Jeremy Broderick, at 1451 N 950 West (Ranches at Lakeside), which is in the R-1-22 zone. He noted the purpose of the request is to modify the current height-setback chart to allow a different way of measuring, while not changing the overall height allowed in each zone. Mr. Broderick would like to build a garage that will store his RV, which requires a 14 ft garage door. Given the space he has available on his lot and the current setback requirements, he is unable to build a structure that meets his needs. Because he is on a corner lot, his rear yard faces his neighbor's side yard. The neighbor's home (or any home) can be up to 35 feet high 10 feet from the property line, yet his accessory structure is limited to a height of 24 feet at the same 10-foot setback.

Mr. Nilsen reviewed how the city came up with the current height regulations and that until a couple years ago, accessory structure heights were approved by the planning commission on a case-by-case basis as part of a conditional use permit application. As a result, several of his neighbors have accessory structures similar to what he is asking for that do not meet current code. The city implemented the setback-height chart to eliminate the conditional use process and to help minimize impact to neighbors of large buildings.

Mr. Nilsen explained that the new proposal allows the side/rear setback to be reduced depending on the type of roof that is being measured. The distance from the property line to the peak is the same under both scenarios but the distance of the wall from the property line may be reduced. The minimum side/rear setback to the wall is 6 feet.

Under this scenario, two measurements will be used to determine the setback.

1. The side/rear setback measured from the property line is based on the height of the peak of the roof.
2. The side/rear setback measured from the property line is based on the height of the wall where it connects to the roof, and can be less than the setback measurement to the peak.

Kris noted that the line of site (view) at a 12 ft height is the same for both scenarios. The line of site (view) at a 6 ft height is slightly more obstructed.

Public Comment: No Public Comment was offered.

Action Taken: *Corey Sweat moved to close the public hearing at 7:40 pm. Laura Mitchell seconded the motion and voting was unanimous in favor.*

4. Consider Request from Jeremy Broderick to Change the Way Accessory Structure Heights are Measured.

Jeremy Broderick took the stand to address some questions from the commission. He noted the reasons why he made the request which are listed above. He feels like this is a compromise that will not affect the neighbors but will make a difference for him and others who may have a need for a 14 ft. garage door. He added that the space between the building and property line tends to be a place for collecting junk and weeds.

Discussion took place and both the applicant and Kris Nilsen drew diagrams on the white board to better explain the proposal and provide examples of the difference between the current code and the new proposal.

There was also discussion about having the proposed change apply to all residential zones, not limited to the R-1-22.

Corey Sweat pointed out that this deals with unique situations that may come up in the city and is a good compromise to the conditional use permit.

Action Taken: *Corey Sweat moved to send the proposed text change regarding Accessory Structure Heights to City Council with a positive recommendation. Dennis Vest seconded the motion and voting was unanimous in favor.*

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