



Planning and Zoning

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TCLUO 2022-202

Text Amendment to Tooele County's Land Use Code

Public Body: Tooele County Planning Commission

Meeting Date: February 1, 2023

Request: TCLUO update to Table 16-4-3.2 "Commercial and Industrial uses." As well as definition 140 "Home occupation" in Chapter 2.

Applicant: Cassandra Arnell

Planners: Trish DuClos

Planning Commission Recommendation: Not yet received.

Planning Staff Recommendation: Approval with staff recommendation.

PROJECT DESCRIPTION

Cassandra Arnell is requesting an ordinance update to Land Use Table 16-4-3.2(j) "Commercial and Industrial uses" for "Home Occupations." As well as definition 140 "Home occupation" in Chapter 2. These changes would allow more flexibility to home occupations in Residential and multiple residential zones. The request would be to add "home-based business" to chapter 16 with a CUP (Conditional use permit) and/or changing the definition of "home occupation" to allow operation outside of the dwelling.

COMMUNITY RESPONSE

Planning staff has not received community response on these suggested changes. Any responses received after this staff report is submitted to commission will be presented at the meeting on February 1, 2023.

ISSUES OF CONCERN/MITIGATION

The applicant has requested 2 possible changes. One would be to add "Home-based business" to Chapter 16 zones. There have been previous meetings with planning commission and county council with a similar request to allow these in RR (Rural Residential) zones. Among adding commercial and heavy equipment. The request was eventually denied by council.

Staff's suggestion to a solution in adding more uses in Chapter 16 is listed in Staff Analysis.

PLANNING COMMISSION RESPONSE

Not yet received.

PLANNING STAFF ANALYSIS

Planning staff agrees with the needed changes in the definition of "home occupation." Staff also suggests adding accessory structures among the requested changes. The applicant's requested changes are attached in a document provided as well as their extensive research of similar codes in other counties and cities and Tooele County's General plan 2022. Staff recognizes the limit the current definition may have, and upon research and information provided, recommends to update this definition to allow more flexibility.

Request: TCLUO update to Table 16-4-3.2 “Commercial and Industrial uses.” As well as definition 140 “Home occupation” in Chapter 2.

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(Applicant’s proposed changes are in red while staff’s recommended changes are in blue in the attachment provided.)

In one of the requests by the applicant they wanted to add “home-based business” to Chapter 16’s (residential and multiple residential districts) table of uses. However, in previous meetings commission and council heard a similar requested item for adding and changing “home-based business” and its requirements to Chapter 15 (Multiple use, Agricultural, and Rural Residential Districts). Council denied that request.

Because staff recognizes the possible nuisances and burden on neighbors with a home-based business in residential areas, staff’s recommendation is to add 2 types of “home occupations” in Chapter 16, with the updated definition.

The state requires cities and counties not to charge a fee to home occupations if there is no impact on the neighbors. When Tooele County’s planning and business license departments processes applications for home businesses there are a few different options to decide on. All of which still require a CUP (conditional use permit). Planning staff and business licensing agree that home occupations that have no impact to the neighbor would be a permitted use. Which would not require them to obtain a CUP and just a license, with no fee. These changes would help applicants and county to be in line with state requirements as well as a quicker and easier turn around for local business owners.

PLANNING STAFF RECOMMENDATION

Planning Staff encourages the Planning Commission to review the proposed ordinance updates regarding Tooele County Land Use Ordinances in Table 16-4-3.2, definitions in Chapter 2 and Tooele County General Plan 2022 prior to recommending a motion to County Council.

Staff’s recommendation for approval would be those listed in blue on the attached document.

Table 16-4-3.2 and Chapter 2 definitions, changes

| Table 16-4-3.2. Commercial and Industrial Uses. | | | | | | | | |
|---|---------------------|-------------------------|----|----|----|----------------------------------|----|----|
| # | Use | Residential (R-1-__) | | | | Multiple Residential (R-M-__) | | |
| | | 21 | 12 | 10 | 8 | 7 | 15 | 30 |
| j | Home-based business | C1 | C1 | C1 | C1 | C1 | C1 | C1 |
| k | Home Occupations | C1 | C1 | C1 | C1 | C1 | C1 | C1 |

| Table 16-4-3.2. Commercial and Industrial Uses. | | | | | | | | |
|---|---|-------------------------|----|----|----|----------------------------------|----|----|
| # | Use | Residential (R-1-__) | | | | Multiple Residential (R-M-__) | | |
| | | 21 | 12 | 10 | 8 | 7 | 15 | 30 |
| j | Home occupations with 1 or more of the following conditions: 1. Operates only occasionally and by an individual who is under 18 years old. 2. No customers coming to the home. 3. Will not exceed more than 3 deliveries a day. | P | P | P | P | P | P | P |
| | Home occupations with 1 or more of the following conditions: 1. No more than 2 employees hired that reside outside of the dwelling. 2. May have customers come to the home provided adequate off-street parking is provided. 3. Classes or education may be provided in structures or outside on the premise provided they do not cause a nuisance to surrounding neighbors. | C1 | C1 | C1 | C1 | C1 | C1 | C1 |

(140) “Home occupation” means any use conducted entirely within a dwelling **or portion of the premises** and carried on by persons residing in the dwelling unit and no more than one employee hired outside of the dwelling who will work within the dwelling **or on the premises**, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character.

(140) “Home occupation” means any use conducted entirely within a dwelling **or accessory structure and may at times utilize a portion of the premises.** ~~and~~ It is carried on by persons residing in the dwelling unit and no more than one employee hired outside of the dwelling. ~~who will work within the dwelling unless otherwise stated~~, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character. **There shall be no outside storage allowed.**

I. Requested Action

- A. Amend Table 6-4-3.2 to make "Home Based Business" as currently defined in Tooele County Code, available to Residential (R-1- __) properties with C1 Conditional Use Permit.

For reference: Land Use Ordinance 2-2 Definitions

(139)(124) "Home based business" means a commercial or light industrial use of a scale greater than home occupation but which is still secondary to the residential use. *It may be conducted entirely within a dwelling, an accessory structure or on the premises.* A home based business does not include agricultural activities.

(140)(125) "Home occupation" means any use conducted *entirely within a dwelling* and carried on by persons residing in the dwelling unit and no more than one employee hired outside of the dwelling who will work within the dwelling, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character.

OR

- B. Revise definition ¹⁴⁰425 to read as follows:

"Home occupation" means any use conducted entirely within a dwelling [or portion of the premises] and carried on by persons residing in the dwelling unit and no more than one employee hired outside of the dwelling who will work within the dwelling [or on the premises], which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character.

II. Background Information

My name is Cassandra Arnell. I live at 101 Lakeview on a third of an acre in Stansbury Park, adjacent to the lake. I'd like to formally offer private swim lessons out of our family's backyard pool. In looking into the formalities of it, I realize we are unable to apply for a Conditional Use Permit because the business would not be conducted "entirely within a dwelling" as required for a Home Occupation. A Home Based Business CUP (which does allow the use of accessory structures) is not available in my neighborhood.

This restriction seems to paint an overly broad stroke against the types of business activities allowed on private property. I understand that zoning rules should promote appropriate uses, but to allow absolutely nothing outside of the dwelling seems over-reaching. Nearly every house on Lakeview in Stansbury Park backs up to the lake and sounds of children splashing and squealing with delight abound in the summertime. What more natural and appropriate

activity could there be, than to teach children to enjoy this resource safely? Unfortunately, the current code won't allow for evaluation of this proposed use.

III. Rules in Other Counties and Municipalities

I looked at about 10 land use ordinances in Utah cities/counties. None make a distinction, as Tooele County does, between "Home Occupation" and "Home Based Business." All residents who want to run a business out of their property are allowed to go through a Conditional Use Permit process. Here are five definitions for reference:

1. Tooele City:

7-1-5 Definitions Home Occupation – An accessory use consisting of a vocational activity conducted inside a dwelling unit or a structure accessory to a dwelling unit.

2. Grantsville City:

(138) HOME OCCUPATION. (Amended 7/97) A secondary use conducted upon property used primarily for residential occupancy, which is carried on by persons residing thereon. Such a use must be clearly incidental and secondary to the use of the property for residential purposes and that does not change the character thereof. A home occupation shall not be authorized to use advertising, except as otherwise permitted herein. No public display related to a home occupation shall be authorized and no noise may be created which is audible at the boundaries of the premises. The intent of this definition is that the conditional use permit approving any home occupation shall assure that the character of the premises and of the neighborhood will remain in harmony with the general intent of the zoning district and that, where uncertainty exists, neighborhood residential values shall be considered paramount.

3. Iron County

17.36.280 - Expanded home occupations. Expanded home occupations may be authorized as an administrative land use permit by the zoning administrator in zones established in Section 17.16.030, Table of Uses, and in accordance with the provisions of Chapter 17.38, Administrative Land Use Permits. . . . Regulations.

On receipt of a complete application, the zoning administrator shall grant a permit for a home occupation if the zoning administrator finds that all of the following conditions and requirements are met.

The expanded home occupation: . . .

Dwelling and accessory structures must retain architecture and outside appearance as a residence and residential neighborhood; . . .

(Ord. No. 2013-3 , § 8, 5-28-2013)

4. Davis County

Section 15-01-210 Definitions

"Home occupation" means the use of a portion of a dwelling or accessory building studio, or work room for occupations at home.

5. Summit County

(Appendix A Definitions) HOME OCCUPATIONS: Those occupations or professions which may be conducted within a dwelling unit or on the premises thereof and is clearly incidental and secondary to the use of the dwelling unit for residential purposes.

IV. Goals and Policies of the Tooele County General Plan

There are several ways in which this change would further the goals and policies of the general plan. First, on page 9, the General Plan discusses the population and cost of living increases. It says "That land use element needs to be flexible and adapt with the County's growing needs." This amendment would certainly allow for more flexibility and adaptation of residential land uses, it would also allow residents greater ways to supplement their income in this time of rapid cost of living increases.

Further, on the same page, the general plan recommends best practices "that ensure land uses and intensities are context-appropriate." As it reads now, the county is summarily rejecting uses that might be context-appropriate. By making this change, the county could somewhat remedy that issue.

On page 12, one desired outcome of the plan is "quality community design and walkability." By having unobtrusive services within residential communities, it encourages walking. In the past when we have taught lessons to friends and neighbors, they often do walk or bike over to our house.

On page 13, the plan recognizes that blanket approaches to zoning distinctions will not properly meet the County's vision and would not allow the flexibility to use judgment on what best serves the needs of the location's context in the time period to which it is needed. This amendment will provide additional flexibility so that the needs of each community can be realized.

Another section of the General Plan discusses open space and recreation spaces. By making this adjustment to the code, the county opens the door to residents providing recreation opportunities within neighborhoods—i.e. Small scale operations such as swim lessons in backyard pools, tumbling/dance/yoga/Tai Chi/personal training/music lessons in a yard, detached garage or other structure. From my perspective, all of those offerings would enrich my family's recreational experience in the neighborhood.

The land use survey results reported on page 90 of the General Plan show that more than 50% of respondents prefer mixed use and boutique-type businesses over big/small box buildings. Implementing the change requested might be a step toward supporting those types of small businesses and economic developments.

V. Conditional Use and County Control

Finally, even if this change is made, county government retains control of approved uses. This change only goes so far as to allow more proponents of home based businesses to apply for CUPs. It doesn't require that any more be granted.

"7 - 3. No presumption of approval. The listing of a conditional use in any table of permitted and conditional uses found at the end of each chapter of this Tooele County Land Use Ordinance for each category of zoning district does not constitute an assurance or presumption that such conditional use will be approved. Rather, *each proposed conditional use shall be evaluated on an individual basis*, in relation to its compliance with the standards and conditions set forth in this chapter and with the standards for the district in which it is located, in order to determine whether the conditional use is appropriate at the particular location."