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**STAFF REPORT TO THE PLANNING COMMISSION
FOR THE
WORK SESSION ON AUGUST 1, 2011
UPDATE THE HOME OCCUPATION REQUIREMENTS TO IMPROVE FUNCTIONALITY
CASE FILE: PC 2011-1398**

PART I. INTRODUCTION

The purpose of this project is to improve the County's Home Occupation ordinance to clarify the types of uses allowed and ensure adequate protection of adjacent properties from possible off-site impacts. The County's Home Occupation requirements were adopted substantially in their present form back in 1998 and created two levels. The Type A Home Occupations are an *Allowed Use* in all of the County zones and have a very limited activity level allowed. The Type B Home Occupations in general are *Conditional Uses* and must be approved by a Hearings Officer after holding a public hearing. Staff raised this matter with the Planning Commission during the work program discussion in 2009 and 2010 and heard interest by the Commission to work on these requirements during this year. This work session will discuss the possible options to amending the Home Occupation requirements to improve the code's functionality.

Planning staff has broken this work session into technical fixes that will make the home occupation easier to implement and subject matter that addresses larger policy issues. This staff report is organized into the parts listed below. Staff recognizes that potential changes included in this report add additional limitations to the use and would thereby require notification of landowners prior to hearing. Changes that staff believes may require such notice are included in Part VI of the report. Should the Commission direct staff to move forward with changes that require notice, staff will schedule the hearing accordingly. Given the scope and importance of this work program task, staff will schedule a second work session if the Commission wants to do that.

The zoning code citations in both Parts II and III are to MCC Chapter 33, however conforming amendments to Chapters 34, 35, and 36 will also be required.

- II. Background Discussion
- III. Improvement to Definitions & Technical Amendments
- IV. Possible Improvements to Type A & Type B Home Occupations
- V. Questions for the Planning Commission
- VI. Attachments.

PART II. BACKGROUND DISCUSSION

The existing home occupation ordinance was crafted by the Planning Commission, citizen involvement and planning staff in 1997 & 1998. Previous to 1998, home occupations were generally not allowed if any presence of a business was apparent to neighbors or the County. A Planning Commission subcommittee worked with planning staff and citizens to draft the home occupation ordinance. The County's home occupation language is based on the City of Portland's code at the time. In 2009, Planning staff briefed the Planning Commission in February 2009 regarding implementation of the Home Occupation ordinance. While Planning Commissioners had limited concern, they felt it was appropriate to place in on the 2011 work program because of concerns identified by staff regarding its operation.

Planning staff researched our past pre-application requests to compile a list of the various types of uses that have been proposed as Type B Home Occupations so that the Planning Commission can understand the breadth of uses considered. These uses include Lumber Crayon Manufacturer, Smoked Fish Manufacturer, Winery, Bed & Breakfast, Wine Importer & Distribution, A/C & Heating Contractor Yard, Landscape Contractor Yard, Real Estate Office, Chinese Medicine College and Healing Center, Chinese Medical Clinic, Window Manufacturing, Conference Center, Wedding & Reception Facility, Skateboard Instructional Facility, Recording Studio, Grappa Distillery, Naturopathic Clinic, Medical Office, Metal Works Business (Welding, Grinding, Cutting), Lumber Mill, Auto Sales, Photo Studio, Pie Bakery, Coffee Roaster, Brewery, Natural Medicine Pharmacy and School, and Glass Art Studio (Blowing/Fusion). For many of these business proposals, staff and applicants put in significant amounts of time in discussion trying to figure out whether the use could move forward as a home occupation.

Consideration of the home occupations use should proceed with the understanding that the minimum thresholds for intensity of use are different in resource and non-resource zones. This has resulted in a code structure where standards applicable to the use in all zones are included in MCC 33.6650 and 33.6300, with additional criteria applicable to resource zoned properties included with the use description in those zones. For example, in the West Hills EFU zone, a home occupation is subject to the criteria in 33.6650 and .6300, together with the criteria in 33.2630(F).

Oregon Revised Statute (ORS) allows the County to authorize home occupations in any zone. It also establishes standards for home occupations for resources zones. The County's resource zones are the Exclusive Farm Use (EFU) and Commercial Forest Use zones (CFU-1, CFU-2, CFU-3, CFU-4, CFU-5 and CFU). Home occupations in these zones must meet the minimum standards stated in the statute, but the County may choose to be more restrictive. In the non-resource zones, which are the Multiple Use Agriculture – 20 (MUA-20), Rural Residential (RR), and Rural Centers (BRC, SRC, RC, PH-RC, OR, and OCI), the County can adopt more flexible regulations than the State statute.

ORS 215.448 Home occupations; parking; where allowed; conditions.

(1) The governing body of a county or its designate may allow, subject to the approval of the governing body or its designate, the establishment of a home occupation and the parking of vehicles in any zone. However, in an exclusive farm use zone, forest zone or a mixed farm and forest zone that allows residential uses, the following standards apply to the home occupation:

- (a) It shall be operated by a resident or employee of a resident of the property on which the business is located;
- (b) It shall employ on the site no more than five full-time or part-time persons;
- (c) It shall be operated substantially in:

- (A) The dwelling; or
 - (B) Other buildings normally associated with uses permitted in the zone in which the property is located; and
- (d) It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.
- (2) The governing body of the county or its designate may establish additional reasonable conditions of approval for the establishment of a home occupation under subsection (1) of this section.
- (3) Nothing in this section authorizes the governing body or its designate to permit construction of any structure that would not otherwise be allowed in the zone in which the home occupation is to be established.
- (4) The existence of home occupations shall not be used as justification for a zone change.

PART III. TECHNICAL AMENDMENTS

Part III discusses proposed additions to the general definition section of our zoning codes and modification of some of the existing definitions relating to Type A & B Home Occupations as listed in Chapter 33, 34, 35 and 36. These new definitions and modifications are needed to clarify the Type A & B Home Occupation requirements. Definitions help planners and constituents alike understand the intent of the code language so that both parties can agree on terms used.

CODE = Proposed Code Language

~~CODE~~ = Deleted Code Language

A. Proposed Definitions to be added to MCC 33.0005 Definitions

The definitions for employee and customers are currently located in the Type B code in the Conditional Use section. These definitions are needed for not only the Type B, but the Type A home occupation. The relocation to the main definition section will more clearly allow their use by both types. In addition, the proposed modification to the “Customer” definition is to clarify that the visitor must be seeking services or a commodity. At present, the arrival of a friend of a resident would qualify as a customer. The term Home is also not defined. Planning staff is proposing to define the term to clarify that it only involves the dwelling. A hearings officer discussed the difference between the Type A Home limitation and the Type B Home Site language. She found that the home was the dwelling and did not include any detached accessory structures. Based on this Hearings Officer’s findings, Planning staff is proposing the definition for home below. Changes to the existing language are shown in *italics*.

[The changes in this section are proposed for MCC 34.0005, 35.0005, and 36.0005.]

~~(A)~~ Employee – One full or part time participant, resident or non-resident, in the business shall constitute one employee.

~~(B)~~ Customer – Any person visiting the site that is not an employee ~~who is associated with the home~~ *who considers purchasing, purchases or receives a commodity or service after payment.*

Home: See Dwelling.

B. Restructure Type A Definition

Presently, the Type A home occupation criteria are contained in the Home Occupation definition. This makes the definition very long and difficult to understand. Planning staff is proposing to replace the Home Occupation definition in MCC 33.0005 and move the Type A home occupation criteria to the **Permits and Certificates** section of the zoning code. This seems to be the best location for the Type A criteria as the Type A home occupation is allowed in all zoning districts. The language shown under MCC 33.0540 takes the existing Type A home occupation and divides it into separate criteria. In addition, planning staff has proposed some minor modifications to clarify the requirements.

[The new home occupation definition will be added to MCC 33.0005, MCC 34.0005, 35.0005, and 36.0005.]

Washington County defines a home occupation in its ordinance as “A home occupation is a lawful activity carried on within a dwelling by a member or members of the family who occupy the dwelling, where the occupation is secondary to the use of the dwelling for living purposes and the residential character of the dwelling is maintained. Bed and breakfast facilities serving five (5) or fewer persons are permitted as a Type I Home Occupation in all districts except the Institutional, EFU, EFC and AF-20 Districts (Section 430-63.1C does not apply to bed and breakfast facilities). Bed and breakfast facilities serving more than five (5) persons are subject to the standards of Section 430-19 - Boarding House (including Bed and Breakfast facilities for more than five (5) persons)”

Clackamas County defines a home occupation as “An occupation or business activity which results in a product or service; is conducted, in whole or in part, in a dwelling and/or an accessory building normally associated with primary uses allowed in the underlying zoning district; is conducted by at least one family member occupying the dwelling; and is clearly subordinate to the residential use of the subject property. Home occupations do not include garage sales, yard sales, holiday bazaars, or home parties which are held for the purpose of the sale or distribution of goods or services unless such sales and/or parties are held more than 6 times in a calendar year or operate in excess of 24 total days in a calendar year.”

Proposed Home Occupation Definition: A Type A home occupation is one where the residents use their home as a place of work. A Type B home occupation is one where the residents use their home site as a place of work.

[The code language proposed below will be added to MCC 33.0540, MCC 34.0540, 35.0540, and 36.0540.]

CODE = Modified language from the original Type A definition.

MCC 33.0540 Type A Home Occupation.

The residents occupying the dwelling on a parcel may conduct a Type A home occupation upon registration of the use on a form provided by the Planning Director and in compliance with the following:

- (1) The residents use their home as a place of work.

- (2) One non-resident employee or customer may be on the premises at any one time in addition to other residents occupying the dwelling. ~~the resident participant.~~

Clarification that other residents are allowed on the property when the business is open. Staff notes that use of the singular “customer” precludes the situation where multiple people associated with the same transaction need to attend the site together. One example would be where a service professional such as a CPA, needs to meet with related clients.

- (3) No new buildings or modifications to existing structures shall be allowed (constructed after March 14, 1998).
- (4) No deliveries other than those normally associated with a single family dwelling and between the hours of 7 a.m. – 6 p.m. Deliveries for the home occupation shall be by parcel post, United Parcel Service, or similar in-town delivery service trucks.

Incorporates the definition for Normal Deliveries into the approval criteria so that an applicant is aware of the limitation on the size of delivery trucks.

- (5) No outdoor storage or displays shall occur, including vehicle parking associated with the Home Occupation.
- (6) No signage shall be allowed, (including temporary signage and those exempted under MCC 33.7420 with the exception of those required under the current "Street Naming and Property Numbering" provisions of Multnomah County.
- (7) No noise above 50 dba (decibels adjusted) at the property lines shall be permitted.
- (8) No repair or assembly of any motor vehicles or motors can occur as part of a type A home occupation. A motor vehicle includes any vehicles or equipment with internal combustion engines (such as autos, motorcycles, scooters, snowmobiles, outboard marine engines, lawn mowers, chain saws, and other small engines.

The existing definition for motor vehicle is added to the standard that repair and assembly of motor vehicles is not permitted. By adding the word “motor” in front of vehicle, it clarifies the code language so that repair or assembly of bicycles (a vehicle) is allowed.

- (9) Vehicles used, parked or stored shall not exceed a gross vehicle weight of 11,000 pounds.

The existing definition of “Normal Deliveries” is “The home occupation shall not involve the use, parking, storage or repair of any vehicle exceeding a gross vehicle weight of 11,000 pounds, except deliveries by parcel post, United Parcel Service, or similar in-town delivery service trucks. These deliveries or pick-ups of supplies or products, associated with business activities, are allowed at the home only between 7 a.m. and 6 p.m.” Planning staff is incorporating this piece of the definition into the standards.

- (10) A Type A home occupation may not serve as ~~headquarters or a dispatch center~~ where employees come to the site and are dispatched to other locations for work.

Proposed modifications are to clarify what a dispatch use actually is. Customers and staff have been unsure what type of use this actually is.

- (11) The tract of land which the dwelling occupies ~~A type A home occupation~~ must have direct access to a public road (no easements).

At present, if a Lot of Record involves one land locked property and a parcel with road frontage and the house is on the land locked parcel, a resident cannot qualify for a Type A home

occupation. The above clarifies that if a property owner's tract has direct access to a public road, a Type A home occupation may be authorized. The intent of the code was to prevent people from using an easement without maintaining it for a home occupation.

C. Improve Type B Functionality and Incorporate Case Law

Clarification is needed to the Type B Home Occupation ordinance based upon Hearings Officer's decisions and difficulties with consistency. The first group of changes modifies the code language for the Type B to match the Type A Home Occupation ordinance where the two ordinances overlap on restrictions. When the wording differs but the intent is the same, it may be viewed or argued that the codes are actually different. The second group of modifications adds language to clarify requirements to match the intent of the code. Planning staff has compared the various code requirements for the Type A Home Occupation use with the Type B use in Attachment A. Planning staff addresses each of these changes with a comment in *italics* to assist the Planning Commission in understanding the reason for the change.

[The code language proposed below will be added to MCC 33.6660, MCC 34.6660, 35.6660, and 36.6660.]

§ 33.6660 CRITERIA FOR APPROVAL

The approval authority shall find that the following standards are met:

(A) The residents use their home site as a place of work. The home site means the dwelling and permitted enclosed accessory buildings within 100 feet of the dwelling.

Planning staff is proposing to incorporate the definition of Type B home occupation into this approval criterion and seek clarification of what the term "home site" means. A County Hearings Officer in T3-03-010 (Attachment F) found that the terms "home site" and "home occupation" envision a relationship between the residence and the business. This case involved a nonresource zoned property in the Rural Residential zone.¹ In this case, staff found that the proposed use in a remote accessory structure did not meet the "use of home site as a place of work" provision. Staff further found that the term "home site" does not limit activities of the use to just the dwelling as is the case with Type A home occupations. The Hearings Officer did find that the meaning of the term "home site" isn't clear, but that it doesn't allow use of a completely separate structure for the business. The Hearings Officer also discussed but did not rule on whether the term required the use to occur within the dwelling. Staff is seeking guidance from the Commission on how we should define these two concepts.

What is clear from this decision is that accessory structures that are far away from the dwelling do not constitute use of the home site for a Type B home occupation. Staff is proposing the 100 ft distance as a way of defining this relationship and to not preclude use of an accessory building. The proposed distance is based on the reasoning behind the Commercial Forest Use forest practice setback. That reasoning is that an accessory structure within 100 ft of a dwelling has a relationship with the building. An accessory structure that is located within 100 ft of the dwelling is near enough that if the building catches fire, it would be noticed more quickly than a building farther away. Based on the same reasoning, excess noise, chemical smell or vibration from the business

¹ The relationship between activities in a home occupation and the dwelling is defined for resource zones in ORS 215.448. See Part IV. B. for a more detailed discussion.

would affect the residents of the dwelling and cause them to alter their business practices which could also reduce impacts on neighbors.

The second concept related to the meaning of “home site” is whether the code should allow activities associated with the use to occur outside of the dwelling (or accessory structure). The Hearings Officer speculated about whether this is provided for in the code based on criteria in the Type B ordinance that in her view do not clearly address potential impacts from outside activities. Staff notes that the Type B criteria incorporate the conditional use criteria as well into the analysis and those conditional use criteria expand the impacts analysis (see Attachment B). The language staff has included in (A) above would limit the activities to within the dwelling or accessory structure as required for resource zoned properties. This approach would preclude outdoor events such as weddings from approval under the Type B permit. Staff is seeking direction from the Commission on how to better define this concept.

~~(A)~~ **(B) The standards found in MCC 33.6315.** [These criteria have been provided as Attachment B]

~~(B)~~ **(C) The home occupation does not employ more than 5 employees The total number of employees associated with the home occupation shall not exceed five, whether employed full or part-time.**

The current Type B Home Occupation and ORS 215.448 sets a five person maximum limit for employees. Some applicants thought that the limitation was a maximum of five employees per shift or that part time employees could be added together to equal one employee. Planning staff is proposing language to clarify that the limitation of the five employees is for all shifts.

~~(C)~~ **(D) The site has on-site parking as per MCC 33.4100 to accommodate the total number of employees and customers.**

~~(D)~~ **(E) No deliveries other than those normally associated with a single family dwelling and between the hours of 7 a.m. – 6 p.m. Deliveries for the home occupation shall be by parcel post, United Parcel Service, or similar in-town delivery service trucks.**

Incorporates the definition for Normal Deliveries into the approval criteria so that an applicant is aware of the limitation on the size of delivery trucks.

~~(E)~~ **(F) No outdoor storage or display.**

~~(F)~~ **(G) No signage (including temporary signage and those exempted under MCC 33.7420) with the exception of those required under the applicable street naming and property numbering provisions in Multnomah County Code.**

~~(G)~~ **(H) No noise above 50 dba (decibels adjusted) at the property lines shall be permitted.**

The changes to (H) are for consistency purposes. The addition of ‘(decibels adjusted)’ and ‘shall be permitted’ synchronizes the Type B language with the Type A definition.

~~(H)~~ **(I) No repair or assembly of any motor vehicles or motors. A motor vehicle includes any vehicles or equipment with internal combustion engines (such as autos, motorcycles,**

scooters, snowmobiles, outboard marine engines, lawn mowers, chain saws, and other small engines).

The existing definition for motor vehicle is added to criterion (I) that repair and assembly of motor vehicles is not permitted, so that it does not need to be added to the Definition section of MCC 33.0005.

~~(I) (J) The application has been noticed to and reviewed by the Small Business Section of the Department of Environmental Quality.~~ *Option 1: Type B Home Occupations must be in conformance with all other applicable state codes.*

With DEQ no longer having a Small Business Section, a simple fix would be to utilize the language in the Type A requiring compliance with state laws. This would allow for input from DEQ, Sanitarian, Department of Agriculture, etc to ensure that proposed uses take into consideration these other agency's requirements when making an application to Land Use Planning (Option 1). Another option would be to have a more specific criterion that does not rely on other agency contacts and rules to ensure conformance. Criteria (J) could be amended to read as follows:

Option 2: (J) Hazardous substances are limited to consumer quantities. Consumer quantities of hazardous substances are packaged and distributed in a form intended or suitable for sale through retail sales outlets for consumption by individuals for purposes of personal care and household use.

From the City of Portland's code

Option 3: (J) The use of hazardous materials shall not be in quantities greater than those normally associated with the primary uses allowed in the underlying zoning district, or in quantities greater than those exempt amounts allowed by the current edition of the Oregon Structural Specialty Code, whichever is less.

Based on Clackamas County's home occupations code.

~~(J) (K) Each approval issued by a Hearings Officer shall be specific for the particular home occupation and reference the number of employees allowed, the hours of operation, frequency and type of deliveries, the type of business and any other specific information for the particular application.~~

~~(K) (L) No building or structure is proposed to be constructed that would not otherwise be allowed in the zoning district. Buildings or structures used as part of the home occupation shall not require a building code occupancy rating other than R-3 or U as determined by the County's building official.~~

In Slavich vs. Columbia County², the Land Use Board of Appeals (LUBA) found that the remodeling of a pole barn that radically changes its character, whether interior or exterior such that it would not normally be found in the zone was not allowed by ORS 215.448(3). While this case was for a remodel, the same reasoning would apply for a new building. In our zones allowing Type B home occupations, typical buildings found are single family dwellings, accessory buildings and

² 16 Or LUBA 704, 708 (1988)

exempt farm structures. A home occupation would not constitute a farm use, so a home occupation could not occur in an exempt farm structure. This leaves dwellings and accessory buildings. Planning staff contacted one of our building departments to better understand building occupancies. A single family dwelling is constructed to a 'R-3' building code occupancy and an accessory structure or building are reviewed under the 'U' building code occupancy. Planning staff discussed with our building officials when an occupancy rating changes for a home occupation use. Staff was told building occupancy would change when a commercial or industrial home occupation utilizes over 50% of the building. The building would then need to be improved to meet the new occupancy rating as specified by the building code. By relying on the building code occupancy rating and consulting with our Building Official, planning staff will be able to ensure that a type of building not allowed in the zone will not be constructed.

(M) Vehicles used, parked or stored shall not exceed a gross vehicle weight of 11,000 pounds.

The language, "Vehicles used, parked or stored shall not..." was in the definition for Normal Deliveries in the Type B language. Its intent was to apply to the home occupation use and restrict the size of vehicles used by the business operation. By moving it from the definition section to the approval criteria section helps to ensure that vehicle size is considered as part of the home occupation review.

PART IV. POSSIBLE IMPROVEMENTS TO TYPE A & B HOME OCCUPATION

Part IV examines possible improvements to the Home Occupation ordinance to give better guidance to applicants and planners. The topics are intended to respond to the county experience with business related uses and to holdings in applicable land use case law. Long Range Planning and our Code Compliance section analyzed the types of complaints received by Land Use Planning from 1996 to present (Attachment C). Planning then categorized these complaints into various use types to better understand the activities occurring in our rural areas (Attachment D). A summary of the results are shown in the table below:

Business Related Complaints Received by Multnomah County Code Compliance, 1996 – 2011*	#	%
Auto Related	28	15.7%
Storage & Dispatch Businesses	35	19.6%
Commercial Uses	5	2.8%
Industrial Uses	28	15.7%
Hosted Events	33	18.5%
Sports Entertainment	11	6.1%
Farm Sales	17	9.5%
Miscellaneous Uses	21	11.7%
<i>Total Complaints</i>	<i>178</i>	

*Attachment C & D

This information indicates that approximately 70% of the complaints received were about four categories of business use: auto, storage and dispatch, industrial, and events. Multiple complaints may have been submitted on a property, but the property is only represented once in the numbers (Attachment C). Planning staff took a variety of complaint descriptions and developed the above

categories from those descriptions. Auto repair uses are not allowed as either a Type A or B home occupation. Small scale industrial uses are feasible as a Type B home occupation, but the business may not fit within the size limitation. Outdoor events do not qualify as home occupations in resource zones. Indoor events could qualify depending on the event size. At present, planning staff is not proposing hosted event language be added.

A. Storage and Dispatch Centers.

Storage and dispatch type businesses were the largest number of complaints received during the time period. This use category included tow truck business, contractor's yard, landscaping business, heating/cooling repair business, storage of commercial vehicles, sign business/manufacturing, warehouse/distribution, and house cleaning business'. These types of operations would fall within the proposed definition of a *Dispatch Center* where the employees come to the site and are dispatched to other locations for work. There are numerous vehicle trips associated with these uses as employees come and go from the site during the day. In addition, there can significant noise and odor impacts from idling vehicles.

In *Holsheimer vs. Columbia County*³, the Oregon Court of Appeals found that a paving company that has a home office and stores equipment on a property does not qualify as a home occupation pursuant to ORS 215.448(1)(c) due to the constant movement of vehicles and equipment to and from the property to off-site job locations. ORS 215.448(1)(c)⁴ requires a business in resource zones to be substantially operated in the dwelling or accessory building. When the dispatching of equipment and employees to off-site job locations is the predominant portion of the business operation, it does not fulfill the home occupation statute for resource zones.

The Planning Commission could direct staff to incorporate the above limitation to all zones related to dispatching. The definition for a Type B home occupation states "...Type B home occupation is one where the residents use their home site as a place of work but exceeds the standards of the type A home occupation". If the business operator leaves the property for a significant portion of the work (paving of streets, building additions to other peoples' dwellings, air conditioner repair at your home), the use of the homesite becomes ancillary to the primary off-site work. The primary worksite is not the home and these types of uses do not appear to meet the qualifications for being a Home Occupation. If the Planning Commission feels that dispatch uses should be clearly prohibited as a Type B, staff would recommend an addition of a criterion like in the Type A home occupation standards.

MCC 33.6660 CRITERIA FOR APPROVAL (Type B Home Occupation)

(N) A Type B home occupation may not serve as a dispatch center where employees come to the site and are dispatched to other locations for work.

Another approach would be to build in a qualifier criterion where a certain percentage of the business could occur off the site, provided the home site is substantially used for the business.

MCC 33.6660 CRITERIA FOR APPROVAL (Type B Home Occupation)

³ 133 Or App 126, 890 P2d 447 (1995)

⁴ ORS 215.448(1) & (2) apply to resource zones only. It is possible for the County to allow dispatch uses in the MUA-20, RR & RC zones.

(N) The predominant portion of the business functions shall take place within the dwelling or accessory building occupying the home site. The portion of the business functions operating off-site shall be incidental to the use of the home site for the home occupation.

B. Hosted Events (Weddings, Picnics, Concerts).

The second largest category of uses is hosted events. These uses include outdoor concerts, weddings & events and retreat facilities. Hosted events generally involve a large number of individuals coming to a site. Impacts that can be generated include inadequate parking, noise, litter, traffic, interruption of farm uses and in some cases trespass onto adjacent properties. In the recent Land Use Board of Appeal's (LUBA) case, Green vs. Douglas County⁵, LUBA found that in resource zones the use of one's property for outdoor events does not meet the restrictions found under Oregon Revised Statutes (ORS) 215.448 if the outdoor element of the use is the chief component of the use. Home occupations must substantially operate in a dwelling or other buildings on the site, but parking of vehicles and minor elements may occur outdoors. It is possible to host events within large barns and dwellings with limited outdoor use, but that is not the typical operation plan proposed or utilized in our rural settings. At present, the definition of Type B home occupation is one where the residents use their home site as a place of work. As discussed in Part III.C. planning staff is proposing to move the Type B definition to the approval criteria and clarify that the home site only involves the dwelling and permitted enclosed accessory buildings within 100 feet of the dwelling. This should address the need for home occupations to substantially operate within a building on the site. But, ORS 215.448 does allow incidental use for minor elements such as off-street parking, and playgrounds for day cares. To clarify that incidental use of the surrounding lands may be authorized, planning staff is proposing to add the **language in bold** to criteria (A). It is possible to adopt less restrictive language for non-resource zones and if the Planning Commission feels that this is appropriate, planning staff can draft Type B home occupation language based upon general zones, or incorporate the more restrictive changes to meet case law into the resource zones where needed.

(A) The Type B home occupation shall be where the residents use their home site as a place of work. The home site means the dwelling and permitted enclosed accessory buildings within 100 feet of the dwelling. **Incidental use of the surrounding lands for minor uses associated with the home occupation may be authorized.**

C. Vehicle Trips /Customers.

A common impact between dispatch centers and hosted events is that vehicle trips are generated. When a customer or employee visits the business entity, there are at least two vehicle trips generated for each contact. For a home occupation with 5 employees driving to their job on a rural property, there is a minimum of ten vehicle trips generated per day. If each employee leaves for lunch and then returns for the afternoon to work, the minimum trips generated would be twenty. Customers and delivery vehicles could generate additional trips to the site. At present, the Type B home occupation criteria do not establish any maximum customer level or trips generated. The US Department of Transportation finds the average number of daily vehicle trips per driver per dwelling is three trips (in 2009). A family living in a rural area with four drivers would on average

⁵ LUBA No. 2010-106

generate 12 vehicle trips per day. A hosted event for 200 to 300 people (4 people / car) would generate between 100 to 150 vehicle trips on a single day without even considering the employees.

For a dispatch center employing five individuals, vehicle trips would be at least ten and would increase depending on the number of times a worker returns to a site to drop off paperwork, equipment for repair or pick up parts for off-site work. These can be delivery of goods and services and customers dropping off items or picking them up. Vehicle trips are variable, but when a complaint is made regarding these types of businesses, people oftentimes mention the number of vehicle trips to and from the site.

Currently, the purpose of the County's Type B Home Occupation ordinance is **"...to address the need for home based business that are small scale businesses (not more than 5 employees) and that fit in with the characteristic of the neighborhood or the area. The regulations are designed to:**

(A) Protect the individual characteristics of areas in unincorporated Multnomah County and maintain the quality of life for all residents of the communities.

(B) Join in an effort to reduce vehicle miles traveled, traffic congestion and air pollution in the State of Oregon."

In past land use applications, planning staff has looked to the purpose statement to give them guidance regarding the scope of a proposed home occupation and the community served by the business. The County's Hearings Officers in these land use cases have rejected the use of the purpose statement as a criteria or guidance statement during their review. The Type B criteria may not directly apply all of the listed purposes of the ordinance. If the Commission believes that a closer connection between the purpose statement and the approval criteria should exist, staff has identified several approaches that could be taken. These include:

- ◆ Amend the purpose statement to read as a more general policy framework;
- ◆ Add a limitation for the maximum number of customers coming to the business per day;
- ◆ Limit the number of vehicle trips generated by a Type B Home Occupation; or
- ◆ Add to Chapters 33 (West Hills), 34 (Sauvie Island/Mult. Channel), 35 (East of Sandy River) a criterion similar to that found in Chapter 36 (West of Sandy River) to require a Type B home occupation be limited in type and scale to primarily serve the needs of the rural area.

The above ideas are not an exclusive list and Planning Commission members may have better options or ideas for this concern. Staff notes that the last option suggested was incorporated into the West of Sandy River Plan in 2002 due to the close proximity of much of the plan area to the UGB, and in an attempt to limit new nonfarm uses to support the farm industry in the area. That plan was adopted through an extensive planning process that included recommendations of a stakeholder task force and public outreach. This type of criterion is difficult to administer for a new business as the applicant does not typically have a customer base established. The applicant needs to demonstrate that the service or product will provide for a need in the rural community by marketing study or other methods. A change of this nature would require at minimum, notification of all property

owners that could be affected. The language in the West of Sandy River zoning code Chapter 36 reads as follows:

MCC 36.6315(A)(8) The use is limited in type and scale to primarily serve the needs of the rural area.

PART V. QUESTIONS FOR THE PLANNING COMMISSION

After each question, Planning Staff provides background information for Planning Commission members to assist in understanding the question. This background information and/or comments are identified by *italics*.

QUESTIONS FOR TYPE A HOME OCCUPATION:

- 1. For a Type A home occupation, should the County allow the employee or customer to park outdoors?**

Presently, a dwelling without an attached garage could not qualify as a Type A home occupation if they will have an employee or customers coming to the site. Even if an attached garage was constructed, the home occupation would still be a Type B as the addition would be after the March, 1998 date.

- 2. Should the County remove the existing building requirement in the Type A home occupation?**

Existing Language: No new buildings or modifications to existing structures shall be allowed (constructed after March 14, 1998).

Proposed Language: No new buildings or modifications to existing structures shall be allowed to house the proposed use.

Planning staff is proposing to delete the March 14, 1998 date from the Type A home occupation. Property owners with newer dwellings cannot qualify for a simple office use because their dwellings were constructed after the date. Staff believes a simplification is in order and can be crafted to maintain the original intent of no improvements for a type A without limiting Type A home occupations to dwellings built at a certain time.

- 3. Should the number of customers allowed on the site for a Type A home occupation be increased from one to two?**

At present, a husband & wife or wife & child would not be able to go to a Type A home occupation together. This seems quite restrictive for a Type A use that may serve children (a hair salon, music teacher) or families (furniture builder, marriage counselor).

QUESTIONS FOR ALL HOME OCCUPATIONS:

- 4. Should the County allow signage for a Type A & Type B Home Occupation?**

Washington County, Clackamas County and the City of Portland all allow signage to identify the home occupation. At present, neither the County's Type A or Type B home occupation may display a sign to identify the business.

a. If the County allows signage, should it be based on site frontage or set a maximum size for home occupations?

Currently Multnomah County Code allows for all zones, the following size for freestanding signs “...**Allowable Area – Free standing signs are allowed .25 square feet of sign face area per linear foot of site frontage, up to a maximum of 40 square feet.**” A property with 160 ft of frontage would qualify for a 40 sq. ft. sign. The maximum height of a freestanding sign is 16 feet.

Washington County restricts signage to 2 sq. ft. for most home occupations (silent on wall or freestanding signage).

Clackamas County restricts residential signage for home occupations to 8 sq. ft. (wall or freestanding) and 6 ft high (freestanding).

5. Should the County require a renewal of Home Occupations permits?

Current procedures for Type A & B home occupation are for a single review at the beginning of the business operation on a site. County does not have a time period where an inspection or renewal of the permit is required. Unless a complaint is received, Land Use Planning will not contact or verify that the business is operating in compliance with the permit. During staff’s review of Washington & Clackamas County’s code and the City of Portland’s code for home occupations, it was noticed that these three jurisdictions require renewals by business owners. Planning staff found that this may be an idea to be incorporated into the home occupation code and wanted to present it to the Planning Commission for comment. Washington County requires renewal every year of its Type II & Type III Home Occupations (They have 4 levels). For major home occupations which are similar to our Type B, Clackamas County issues a permit for three years. The permit may be renewed every three years an unlimited number of times. The City of Portland issues Type B home occupations for a two year period with a renewal option.

A renewal of a permit allows the local jurisdiction to verify the business is operating in compliance with its permit and ensure that the business has not outgrown the home occupation restrictions. In addition, a renewal allows neighbors that are being impacted by a use to gain operational changes for non-functioning conditions of approval. Some times when a neighbor receives notice of an application, the use may be of a nature where the true impacts associated with the use may not be known to an individual. With a renewal period, these impacts can be addressed to ensure that the home occupation fits with the character of the area.

6. Should the County move the Type B home occupation from a Conditional Use to Review Use?

In 1998, the County adopted the primary procedure of registration for the Type A and conditional use permit for the Type B home occupation use. In 2002, the Planning Commission & Board adopted a different procedure for the Orient Residential (OR) and Orient Commercial Industrial (OCI) zones in the West of Sandy River Plan. In the OR and OCI zone, the Type B was moved from a conditional use to a review use. Since the Planning Commission found this acceptable in 2002, planning staff is interested in the Commission’s position on moving the Type B home occupation in all zones from a conditional use permit to a review use.

At present, there appears to be a procedural hurdle for many applicants. Many times applicants may attend the pre-application meeting, but not move forward with their application. By moving it to a Type II review, we may reduce the intimidation factor for an applicant/home

owner wanting to establish a home occupation. Many of our customers are leery of the public hearing process. In recent years, the County has reduced the level of review for new forest dwellings (template, heritage and large acreage dwellings). The Planning Commission last month recommended to the Board that the Temporary Health Hardship Permit in the EFU zone be moved also from a conditional use to a review use. One of the benefits though of a conditional use process is that pre-application conference is required before an application can be made.

With a pre-application conference, the County discusses with the neighbors and applicant the approval criteria for the use. The neighbors get to hear the proposal before an application is made and express concerns to the applicant. An applicant can then amend their application so that the neighbor's concerns are addressed. Staff finds this interaction between neighbors to be beneficial. If the Type B home occupation was moved to the Review Use category, it is possible to require a pre-application conference before the Type II (Planning Director Decision) application. This would allow for the early and interactive contact with the neighbors, while reducing the procedural hurdle for some applicants.

QUESTIONS FOR RESOURCE ZONED HOME OCCUPATIONS:

7. Should the County allow non-resident employees on high-valued soils in the EFU zone for Type B?

In the EFU zone on high-valued soils, a Type A may have an employee that is not a resident. The Type B is restricted to residents only. For home occupations on high-valued soils, ORS 215.448 would allow non-resident employees as part of a home occupation. As the code is written, the Type A is less restrictive than the Type B home occupation. The intent of the home occupation ordinance is to have two levels of home occupations. Both the Type A and B home occupation use share a number of similarly restrictive criteria, but the Type A is the low-intensity use for the home and the Type B allows via the conditional use process, a more expansive use of the home site. State law would allow the County to remove the restriction completely and allow up to five non-resident employees.

a. If not, should we restrict the Type A or maintain the code sections as they are written?

8. Should the County allow the sale of merchandise in both the CFU and EFU zones for Type B?

In the CFU and EFU zones, no sale of merchandise is authorized for a Type B, but can occur as a Type A. As the code is written, the Type A is less restrictive than the Type B home occupation. ORS 215.448 allows the sale of merchandise in resource zones.

a. If not, should we restrict the sale of merchandise from the dwelling for Type A or maintain the code sections as they are written?

9. Based on the two levels of home occupations discussion (above under 7.), should the County add the following restrictive language from the Type B to the Type A in the EFU and CFU zones?

“That noise, odor, smoke, gasses, fallout, vibration, heat or glare resulting from the activity is not detectable at any property line;”

NON-RESOURCE ZONE QUESTIONS:

10. Should the County adopt different standards for non-resource zoned properties?

ORS 215.445(1)(a) through (c) and (2) only applies to resource zones (EFU & CFU). Home occupations in these resource zones must meet the minimum standards as follows:

(a) It shall be operated by a resident or employee of a resident of the property on which the business is located;

(b) It shall employ on the site no more than five full-time or part-time persons;

(c) It shall be operated substantially in:

(A) The dwelling; or

(B) Other buildings normally associated with uses permitted in the zone in which the property is located; and

(d) It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.

(2) The governing body of the county or its designate may establish additional reasonable conditions of approval for the establishment of a home occupation under subsection (1) of this section.

The County's existing home occupation ordinance incorporates many of these restrictions into its criteria. The Type A home occupation only allows one employee and the use of the dwelling. The Type B is limited to five employees and the homesite just like state statute. The County can be less restrictive or more restrictive for our MUA-20, RR and Rural Center (BRC, SRC, PH-RC, RC, OR) zones. It is feasible to allow dispatch uses and outdoor events if the language for these zones is modified.

a. If not, should the County revise language to make the Type A & Type B home occupations in the non-resource zones as consistent as possible with the resource zoned properties?

11. Should the County for non-resource zoned properties, expand the types of impacts to be considered from just 'Noise' to include noise, odor, smoke, gasses, fallout, vibration, heat or glare? ?

Existing Language: (H) No noise above 50 dba at the property lines.

Proposed Language: (H) "No noise, odor, smoke, gasses, fallout, vibration, heat or glare resulting from the activity shall be detectable at any property line."

In the EFU & CFU zones, Type B home occupations must meet the following code language "That noise, odor, smoke, gasses, fallout, vibration, heat or glare resulting from the activity is not detectable at any property line;". The Type A home occupation in all zones only considers the noise level at the property line – "...no noise above 50 dba (decibels adjusted) at the property lines shall be permitted. The consideration of additional possible impacts would protect adjacent property owners from possible impacts from home occupation uses while not preventing categories of uses.

PART VIII. ATTACHMENTS

- A. Comparison of Type A & Type B Home Occupation Requirements.
- B. General Conditional Use Approval Criteria

- C. Complaints Received by Land Use Planning from 1996 to June, 2011
- D. Code Compliance Complaints Categorized
- E. ORS 215.448 (2011)
- F. Hearings Officer's Decision for T3-03-010, Pages 41 – 43.