

**MULTNOMAH COUNTY**

LAND USE AND TRANSPORTATION PROGRAM

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<http://www.multco.us/landuse>**MEMORANDUM**

September 23, 2011

To: Multnomah County Planning Commission

From: Lisa Estrin, Planner

Subject: PC 2011-1398 Work Session

As discussed at the August 1, 2011 work session, the purpose of PC 2011-1398 is to improve the County's Home Occupation ordinance by clarifying the types of uses allowed, adding definitions and ensuring adequate protection of adjacent properties from possible off-site impacts. Staff wants the Commission to continue to be aware that the proposed changes being considered are both technical in nature, and add limitations to the code. If additional limitations are included, a Measure 56 notice will need to be provided prior to hearing.

This memorandum summarizes the Planning Commission discussion at the work session to ensure that planning staff has captured the consensus of the Commission correctly before finalizing the proposed amendments to the home occupation for a future hearing. We ceased our discussion at Vehicle Miles Traveled/Customers (page 11 of PC 2011-1398 Work Session Staff Report) with the Commission requesting additional research on other County ordinances. We will be verifying what we heard at the session and then provide the requested customer/vehicle trip information to finish that topic. We will then go to Part V – Questions for the Planning Commission (starting on page 13) to wrap up the work session.

1. Allow the Use of Access by Easement for Type A Home Occupations

Currently the Type A home occupation requirements specify that the access to the parcel or lot where the Type A home occupation occurs directly from a public street. Access by easement disqualifies you from a Type A home occupation. The consensus of the Planning Commission at the August work session is that the County should allow the use of an easement for a Type A home occupation if the easement language does not prevent commercial uses and all property owners involved with the easement grant approval for the Type A home occupation. Planning staff is proposing to delete the criterion completely because the County does not regulate or enforce easement agreements between property owners and a violation of easement language would be a civil matter. If the County was to become involved in verifying that all of the easement holders have granted approval, it is likely that we would have to convert the Type A from a registration to a discretionary action to allow a challenge via an appeal process.

~~A type A home occupation must have direct access to a public road (no easements).~~

2. Use of the home site for Type B home occupations by residents should be limited to the dwelling and enclosed accessory buildings within 100 ft of the dwelling except for incidental uses.

For the Type B home occupation, the residents may use their home site as a place of work. Unfortunately the County code does not define what constitutes the “Home Site”. Planning staff proposed that the term “Home Site” means the dwelling and permitted enclosed accessory buildings within 100 feet of the dwelling. Staff understands the consensus of the Planning Commission to be the home site includes areas within a 100 ft distance of the dwelling as appropriate and no variance should be allowed to extend the 100 ft distance for accessory buildings.

The result of this approach would be that the portions of a property that could be used in conjunction with a Type B home occupation would not include outdoor areas in the vicinity of the dwelling or accessory structures except incidental uses. This is consistent with state requirements and case law applicable to CFU and EFU zones, but is not required in exception zones and rural community zones.

3. Consider Adding Separation Criteria for Type B Home Occupations using Accessory Buildings and Neighboring Dwellings.

The Planning Commission suggested that for new structures proposed as part of the use, they should be located as far away from the neighbor’s dwelling as possible. For existing structures, the residents should be required to complete mitigation measures to off-set the distance from neighbor’s dwelling. In addition, the Planning Commission was concerned about impacts being generated from vehicles coming to and leaving the site. It may be appropriate to include parking and drive aisles/driveways within the standard. Planning staff suggests that a set number such as 50 ft be included in the criteria so that an applicant can choose to meet the non-discretionary criterion or propose mitigation measures to off-set impacts generated by the use. Many applicants want a simple set of criteria while others like the County to consider their individual settings and conditions.

§ 33.6660 CRITERIA FOR APPROVAL

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

(M) Buildings, structures or parking and vehicle maneuvering areas used for the home occupation shall be located at least 50 ft from any dwelling located on adjoining parcels.

(1) If the proposed use cannot meet the above criterion because of physical characteristics unique to the property, the applicant shall propose mitigation measures that off-set the reduction in the buffer. Mitigation measures may include, but are not exclusive to constructing solid fencing, planting a solid vegetative buffer at least 6 ft tall, reduced hours of operation, redesign of the floor plan to move noise, odor, vibration, and interference generating equipment further from the property line, etc.

(2) The proposed reduction is the minimum necessary to allow for the requested use.

4. Add a Definition or Examples to explain the term “Incidental Use”.

At the work session, the Planning Commission directed staff to develop a definition or clarify the proposed code language to ensure that the off-site component of the business is subordinate to the predominant use of the home site and that outdoor use of the home site is incidental. Clackamas

County has set maximum use provisions for *Incidental Uses* [***Incidental Use: The use of no more than 25 percent of the floor area of a structure or 500 square feet, whichever is less.***] Planning staff has modified the following proposed criteria as a starting point for discussion:

Italics = New proposed language

Code = Proposed language

§ 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. *Incidental use of land within the home site for subordinate components of the business such as employee break/smoking areas or play areas may be authorized by the approval authority provided use of the land is short-term in nature.*

(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 and subordinate to the use of the home site for the home occupation and shall constitute no more than 10% of the time spent in operating the home occupation.

5. Consider Developing Code Criteria for Hosted Events in Non-Resource Districts

The use of private property for Hosted Events is a significant number of complaints received by the County's Code Compliance section (see page 9 of the August 1 meeting staff report). Staff heard interest expressed by Commissioners that Land Use Planning should consider creating criteria to authorize Hosted Events on non-resource lands and address the impacts generated from the use on adjoining properties. The development of a new type of Home Occupation regulations for Hosted Events is a significant project that is outside the scope of this task (PC 2011-1398). Planning staff has noted this directive and will list it as a possible work item in the upcoming 2012 work program for the Planning Commission to consider.

6. Modify the Definition for Auto Repair to include New Types of Vehicle Motors

The Type B Home Occupation ordinance defines "**Motor Vehicles**" as "**Vehicles or equipment with internal combustion engines (such as autos, motorcycles, scooters, snowmobiles, outboard marine engines, lawn mowers, chain saws, and other small engines)**". [MCC 33.6650(D)] The Planning Commission pointed out that with the new generation of hybrid and all-electric cars it may be appropriate to reconsider the definition and make sure it includes new terminology for motor vehicles. Planning staff recommends the following update:

MCC 33.0540 Type A Home Occupation.

(A) 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:

(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, *electric, alternative fuel, fuel cell* engines, *motors or power*

plant (such as autos, motorcycles, scooters, snowmobiles, outboard marine engines, lawn mowers, chain saws, and other small engines).

§ 33.6660 CRITERIA FOR APPROVAL

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

~~(H)~~ (I) No repair or assembly of any motor vehicles or motors. A motor vehicle includes any vehicles or equipment with internal combustion, electric, alternative fuel, fuel cell engines, motors or power plant (such as autos, motorcycles, scooters, snowmobiles, outboard marine engines, lawn mowers, chain saws, and other small engines).

7. Use Type A Language to Replace Obsolete Language for DEQ Review

Currently the Type B Home Occupation references the Small Business Section of the Department of Environmental Quality. This department no longer exists. The consensus of the Planning Commission from the August work session was to replace this code section with similar language to the Type A home occupation. This will allow for the coordination with various other agencies (DEQ, Dept of Agriculture, Dept of State Lands, Water Resources, etc).

§ 33.6660 CRITERIA FOR APPROVAL

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

(J) Type B Home Occupations must be in conformance with all other applicable state codes.

8. Clearly Prohibit Contractor Yards and Vehicle Dispatch Centers from Resource & Nonresource Zones while Allowing a Communication Center/Office

ORS 215.448(1)(c) applicable to uses in EFU and CFU zones requires a home occupation in those 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. These types of uses are often described as Dispatch Centers (a.k.a. Contractor Yards). At the August work session, it was the consensus of the Planning Commission that dispatch centers should also be prohibited in the nonresource zones for the same reason. It was important to the Planning Commission that the business predominantly uses the home or home site for the primary business activity. The Planning Commission expressed that the regulations that govern a home occupation should not be zone specific. The Planning Commission did not want to prevent the use of an office to dispatch drivers where drivers or employees never come to the site and the business activity is strictly telecommunication (phone, fax, and internet).

§ 33.6660 CRITERIA FOR APPROVAL

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

(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.

9. Vehicle Miles Traveled Purpose Statement

The Planning Commission requested staff research whether other counties limit customer trips as part of their home occupation regulations. In addition, Commissioners want to know whether other counties have *Serve the Rural Area* criteria or allow for trip reduction via a transportation plan.

Clackamas County: Clackamas County limits the number of trips for each of its three types of home occupation. For Level One (similar to Type A) home occupations, the use shall not generate more than 10 vehicle trips per day. For Level Two (similar to Type B) home occupations but limited to parcels under 2 acres in size, no more than twenty (20) vehicle trips per day shall be generated. For Level Three (similar to Type B) home occupations on parcels over two acres in size, vehicle trips are limited to 30 trips per day. A **vehicle trip** is defined as “***A vehicular movement either to or from the subject property by any vehicle used in the home occupation, any delivery vehicle associated with the home occupation, or any customer or client vehicle.***”

Washington County: Home occupations for Washington County contain limitations on the number of customers allowed to come to the site per day. They have three categories of home occupations where permits are required. Their code allows no employees or only one employee maximum. Type I allows five or fewer customers per day. Type II and III allow a maximum of nine customers per day.

Neither County has a requirement that the home occupation *serve the rural area*, but has instead chosen to restrict the level of intensity of the home occupation via the permitted number of customers per day or vehicle trips. With the limited scope of use allowed by the other counties, trip reduction plans are not discussed. There is two ways to look at trip reduction methods for home occupations. The first being the length of the vehicle trip being generated. The second is the number of vehicle trips occurring per day. If the County was to adopt a criterion for the home occupation to *serve the rural area* in which it is located, we would be trying to control the length of vehicle trips or miles traveled to get to the business. Reduction in the length of trip is good for our environment as fewer pollutants would be generated. It would still result in possible impacts to adjacent neighbors of noise, odor, and dust by an unlimited number of customers. A limitation on the number of customers or vehicle trips allowed for a home occupation per day sets a limit on the amount of noise, odor, and dust to an adjacent site which more closely reflects the concerns about impacts expressed by the Commission at the August work session.

10. The Home Occupation Ordinance Should Focus on the Impacts Generated from the Use

Depending on the business operating as a home occupation, the type of impacts created can vary greatly. The impacts considered under current regulations include noise and hazardous conditions in all zones. In the EFU & CFU zones, we also consider odor, smoke, gases, fallout, vibration, heat or glare resulting from the activity and whether it is detectable at any property line. Clackamas County requires that “***the home occupation shall not create vibration, glare, fumes, or odors detectable to normal sensory perception off the subject property. Vehicles entering or exiting the subject property shall be exempt from this standard, but idling vehicles shall not.***” Washington County’s standards do not allow the home occupation to “***produce no noise or obnoxious odors, vibrations, glare, fumes, or electrical interference detectable to normal sensory perception outside the structure***”. Planning staff recommends that we consider adding the restriction from the EFU & CFU zones to all non-resource zones for odor, smoke, gases, fallout, vibration, heat and glare. The review of these possible impacts from the proposed business will help to focus the review to protect adjacent dwellings.

§ 33.6660 CRITERIA FOR APPROVAL

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

(H) No noise above 50 dba dBA (decibels adjusted), odor, smoke, gasses, fallout, vibration, heat or glare resulting from the activity shall be detectable at the property lines.

At the upcoming work session in October, planning staff will continue where the Planning Commission stopped at Part V of the August staff report, Questions for the Planning Commission. One of the questions to be discussed is whether the County should establish a renewal period for home occupations. Every one hopes a business will grow, but with growth, businesses may need to leave the site and find a commercial or industrial site. Periodic review can be used as a tool to ensure the use is operating within the approved level of activity. Another idea that can help ensure the approved scope of the use continues is to provide that the approval is person specific and does not run with the land like most land use permits. If a property owner sells the property, the permit expires. This concept may be appropriate to apply to home occupations. If the permit is attached to the property owner, a new owner would need to return to the County for a new review of the business operations to ensure that the business will be operated in compliance with the conditions and the County regulations.