

CITY OF BLOOMINGTON
Division of City Planning
REPORT TO THE PLANNING COMMISSION
July 8, 2004

Item 1

GENERAL INFORMATION

Applicant: City of Bloomington
(Case 10000E-04)

Request: Consideration of Home enterprises

PROPOSAL

This report is a guide for the Planning Commission and City Council to consider updating Bloomington's zoning regulations for home enterprises. It is based on a study of effective home enterprise regulations from a number of U.S. and Minnesota municipalities, and helps to determine how they have been effective.

The ordinance addresses several issues in the existing City Code and proposes modifications. These changes address a number of home enterprises and business activities that, technically, do not comply with Bloomington's home occupation regulations but do not generate neighborhood complaints. In addition, the proposed ordinance more clearly stratifies and differentiates between types of home occupations and provides for clearer standards that apply to each type. While some business activities in the home will continue to be permitted as a matter of right and without registration, as currently exists in the Code (such businesses will still be called "Home Occupations"), other business activities will now be allowed after public hearing and Council approval. Such businesses will be called classified as a "Home business" and will be required to procure a permanent Conditional Use Permit.

The general intent to regulate home occupations, whether via licensing or by standard, is to protect community residents from the commercial use of their neighborhoods and to maintain the character of single-family residential community while allowing the pursuit of personal interest. Bloomington's Legal Department, Division of Licensing, as well as the Planning Division, agree that due to recent State Law changes, and the ever-increasing use of technology to work out of the home, a revisit to Bloomington's city regulations on home occupations is necessary.

In this venue, the proposed ordinance helps to clean up Bloomington's Zoning Code as part of the Zoning Code Update project, and helps to make current zoning provisions for home occupations no longer restrictive based on use type. At the same time, the draft language maintains and enhances the preventive nature of the current Code and strengthens the general standards for home occupations and home businesses. By regulating through general standard, rather than by use type, Bloomington will bring its current set of home occupation provisions into the 21st century by eliminating business biasness yet maintaining the integrity of residential communities. In this way, the proposed ordinance will be legally more enforceable, less prohibitive of today's contemporary home enterprises which tend to be more indistinguishable due to their technologically advanced nature, and will allow occupations into the R-1 zoning district, for use by non-residential sites such as churches, to establish wellness programs as a matter of permitted use.

ANALYSIS

Issue:

The U.S. Department of Labor study, Work at Home, (available at <http://stats.bls.gov/news.release/homey.ws.htm>), illustrates the changing nature of where individuals work. According to the 1997 survey, 6.1 million U.S. householders (approximately six (6) percent of all households contain home enterprises and 23.3 million (23 % of all households) have at least one individual working from the home. Comparatively, 29 % of Bloomington's working population works from the home¹. The Labor Department study also found that the number of telecommuters grew from 1.9 million in 1991 to 3.6 million in 1997. The total number of Bloomington telecommuters is comparable, with the number of telecommuters and home enterprise operators on the increase and growing.

In-house, the Planning Division is finding that resident inquiries about working in the home is becoming more common and frequent, with more businesses unable to fit into our older classification system. In addition, the City's current home occupation regulations have conflicting provisions with unintended consequences due to the way modern businesses operate.

As part of the Zoning Code Update project, this staff report compares Bloomington's home occupation standards and its use of the Temporary Conditional Use Permit (TCUP) process for home occupations (those home occupations currently unable to meet the general home occupation standards of Section 19.27) and determines:

1. Whether Bloomington is compatible with current Minnesota State Statutes;
2. Whether Bloomington is "up-to-date" with other home occupation standards statewide; and
3. What action steps are necessary to bring Bloomington's home occupation standards into a more modern context so that Bloomington may remain competitive with other metro area cities in bringing in new business without hindering the residential quality of life.

From this research, planning staff concludes that specific occupation types, like dress-making and offices should be removed from Section 19.27(c) and (d) of the City Code, and allowed as a permitted accessory use within the R-1, single-family residential zoning district subject to new home occupation standards which have been enhanced to better protect residential areas and brought up to current Minnesota State Statute standards. Such standards will be incorporated into a new Section 19.63.09(A), for "Home Occupations," and placed in an "easy-to-read" format. In addition, planning staff recommends that the current Temporary Conditional Use Permit process provided for home occupations which are allowed as a conditional use in the R-1 zoning district, and pursuant to section 19.27(d), be amended with enhanced performance standards and set within a new Section 19.63.09(B) for "Home Businesses" which will now be required to procure a Conditional Use Permit (CUP) in order to operate. The Conditional Use Permit will replace the legally questionable Temporary Conditional Use Permit process currently used for conditionally approvable home occupations, in order to get away from expensive and time consuming Temporary Conditional Use Permit (TCUP) renewals.

¹ Census 2000, SF-3 Sample Data, P31.

It has been the Planning Division's experience that TCUPs are usually always renewed. The question of running 100% of applicants (and staff) through the red tape of renewals in order to provide very little leverage on the 5% or less who might create a problem, seems problematic. Revocation is a very viable alternative remedy. This was the general approach utilized with the interim use amendment process where there was also a discussion for the phased elimination of TCUPs. Rather than build in special revocation standards into a new "Home Based Business Permit," Staff believes that it will be more feasible to use the existing Conditional Use Permit structure (not TCUPs but permanent CUPs). City Law has also determined that it may be more feasible from a legal perspective as well. It is clear under state law that conditions of approval may be attached to CUPs and that CUPs can be revoked. The ability to attach and enforce conditions to some kind of alternative permit type, i.e. the Temporary Conditional Use Permit currently being utilized by Bloomington for home occupations, is less clear.

Handling home enterprises as a conditional use will also reduce the overhead of having another permit type, and all related items such as process, fees, and forms, which come along with any new permit. One implication of using the CUP approach is that "Home Businesses" will need to continue to flow through the PC/CC process for their original approval, but will be significantly less in number than those home occupations currently flowing through this process. It is staffs opinion that it is a bigger waste of PC/CC/staff time when utilizing the TCUP rubber stamp renewal process than that the CUP process which is proposed.

Once again, the draft ordinance attached to this staff report helps to clean up Bloomington's Zoning Code as part of the Zoning Code Update project, and helps to make current zoning provisions for home occupations no longer restrictive based on use type. At the same time, the draft language maintains and enhances the preventive nature of the current Code and strengthens the general standards for home occupations and home businesses. By regulating through general standard, rather than by use type, Bloomington will bring its current set of home occupation provisions into a competitive reality with the rest of the metro area by eliminating business biasness yet maintaining the integrity of residential communities. In this way, the proposed draft will be legally more enforceable, less prohibitive of today's contemporary home enterprises which tend to be more indistinguishable due modern technological advances.

Analysis:

Current State law requires "a uniform policy on business licenses for an adequate level of protection of the public welfare." The State Legislature's intent is to "prevent business licenses from becoming overly burdensome for the citizens and businesses of Minnesota" and requires that "business licenses not duplicate or significantly overlap any other permitting process."(Section 116J.69, Mn. State Statutes). This includes city zoning laws.

Comparable to other Minnesota cities, Bloomington regulates some home occupations through Chapter 14 of the City Code, via the Division of Licensing and Permits, as well as through the City's Zoning Ordinance, particularly Section 19.27(c)(6) of the City Code. Each policy and department adheres to its own set of regulations and processes, which, pursuant to State Code, do not significantly duplicate or overlap one another.

Section 19.27 of the Bloomington City Code, for example, permits certain home businesses to be allowed as an accessory use in single-family homes, without the need for permit to conduct business. Permitted home occupations listed by type in the City Code include: architects, artists, writers,

clergymen, lawyers, teachers, dressmaking, and millinery and similar domestic crafts². Such home occupations are not specifically regulated for in Chapter 14.

Section 19.27 also permits certain other home occupations to be allowed as a conditional use in single-family homes, but which must first procure a Temporary Conditional Use Permit in order to legally operate in the home. Bloomington currently lists certain types of home occupations which may be allowed to seek a TCUP. Such types of businesses include Nurseries, boarding houses, hospitals, beauty shops, art crafts, pet grooming, watch repair, food catering, and licensed therapeutic massage³.

Licensed Therapeutic Massage and certain other home occupations subject to Section 19.27 of the City Code are also regulated through Chapter 14 (Licensing and Permits) through the City's Division of Licensing. Licensed Therapeutic Massage, particularly, must additionally procure a permit from the Division of Licensing in order to practice in the City. Other home occupations which require a Temporary Conditional Use Permit in order to conduct their business in a single-family home, including beauty shops, art crafts, pet grooming, and watch repair are not specifically regulated through the Division of Licensing and inspection but are regulated through other licensing procedures and through the Environmental Health Division. Required documentation may include property address, proof of affiliation, insurance, location, and fee. Occasionally, approval is subject to procuring a TCUP pursuant to Section 19.27, but only if the type of home occupation is specifically listed in the Section 19.27 TCUP list. All other home occupations are permitted without the need for TCUP approval (if compliant with the general standards for home occupations). This is not proposed to change.

Based on the review and analysis which follows, Planning staff has determined that the current Bloomington City Code adequately adheres to State Statute by regulating home occupations both through the Licensing process and through City zoning regulations. This examination shows that Bloomington holds to State Statute by not significantly overlapping these two permitting processes. In addition, our review indicates that Bloomington's process for home occupations functions in a similar fashion to other municipalities in the State but, like older city codes, tends to over regulate by use type and under-regulate through the more non-biased mechanism of general standards applicable to all home occupations, regardless of type.

Recommendation:

The goal of this research is to determine current City policy towards home occupations and whether the Zoning Code should be changed to more adequately reflect State Law, and whether it should, or should not be less biased of business type through utilizing a set of improved standards and by permitting certain specifically mentioned businesses as a permitted accessory use. The analysis and review which follows, attempts to answer this question and, in the end, makes the following recommendations for suggested change:

1. Retain the Division of Licensing Procedures and Policies for home occupations home businesses as currently exist in the City Code in view of the fact that Bloomington reflects the majority of cities, their regulations and procedures for such uses.

² Section 19.27(c)(6)(N), Bloomington City Code.

³ Section 19.27(d), *ibid*.

2. Remove Sections 19.27(d)(13), (24), (27), (32), and (36) of the City Code in order to diverge from the “use type” biasness inherent in older municipal codes.
3. Revise Section 19.27(c)(6) of the City Code and augment current City standards for home occupations and home businesses to better fit today’s workforce, residential communities, and in order to increase compatibility with other Minnesota municipal codes.
4. Revise relevant sections of the City Code to include enhanced standards for “Home Occupations” and “Home Businesses” and to provide for a set of new standards to be utilized for each type of home enterprise. A “Home Business” will be defined in a manner which is similar to a “Home Occupation” which is not a public nuisance but which, for a legitimate reason, cannot meet one or more of the standards required for an accessory “Home Occupation”. A Conditional Use Permit will take the place of the Temporary Conditional Use Permit (TCUP) currently provided by Bloomington’s Planning Division for home occupations which do not meet the accessory use standards but which may be permitted through Conditional Usage. Language should also be provided for those home occupations, which are not required to be licensed through the Division of Licensing to ensure adequate control.

Comparative:

Minneapolis

Home Occupations:

The City of Minneapolis currently regulates home occupations much like the City of Bloomington, through the concept of “indistinguishability.” As long as a home occupation remains relatively indistinguishable from the adjacent neighboring community, a home occupation is permitted with certain restrictions and limitations. Minneapolis limitations include activity level, residential status of employee, exterior appearance, traffic generation, parking, signage, hours of operation, outdoor storage, noise, lighting, and specific development standards. Prohibited home occupations for the City of Minneapolis include: motor vehicle repair, service or painting, or any repair or servicing of vehicles or equipment with internal combustion engines, barber shop or beauty salon designed for more than one (1) client at a time, the sale, lease, trade, or other transfer of firearms, sexually oriented uses (including massage parlors), headquarters or dispatch centers, uses first allowed in their General Commercial or industrial districts⁴.

St. Paul

Home Occupations:

The City of St. Paul Legislative Code, Section 60.412(7) regulates all home occupations, which are incidental to the residential dwelling unit, and which do not change the character of the premises.

Standard requirements for permitted home occupations include:

- No nuisances to neighbors including light, odor, glare, etc.;
- No equipment creating electrical interference;
- No structural alterations to the dwelling unit;
- No exterior storage;
- No signage except for a 2 sq. ft. sign; and
- No accessory structures utilized for the home occupation.

⁴ Minneapolis Code, Section 535.450 (Home Occupation Standards);

Pursuant to Section 60.412, home occupations for handicapped persons that do not meet these conditions may go through the Board of Zoning Appeals.

Examples of accessory home occupations expressly mentioned by type in the St. Paul Code include: professional offices, small service establishments or offices, and home crafts.

Home occupations expressly prohibited by the St. Paul Legislative Code include: retail business, wholesale business, manufacturing, commercial food service requiring a license, limousine business or auto service or repair for any vehicles.

A Conditional Use Permit may be sought for those home occupations which cannot meet the requirements for an accessory home occupation.

Rochester

Home Occupations:

The City of Rochester regulates home occupations via a two-tier conditional use permit process. Home Occupation Type I:

- Must not occupy more than 25% of the dwelling unit or 500 sq. ft.;
- Must have only family members working for the business;
- Can't have mechanical equipment or any neighborhood nuisances;
- Can't have exterior storage;
- Must not take place in an accessory structure;
- Must have only internal entrances to the business; and
- Constitute only Offices and Personal Services.

Rochester's Home Occupation Type II's are home occupations which do not comply with the Type I standards and which must procure a Type II Conditional Use Permit.

Rochester does not expressly allow or prohibit any home enterprise based on type. Rather, all home enterprises must comply with the same set of standards and must procure a conditional use permit for any request of standard exception.

Duluth

Home Occupations:

The City of Duluth regulates home occupations in Section 50-1.38 as any use customarily incidental and subordinate to the principal residential use conducted within a dwelling, provided that no retail business of any sort is involved; no stock in trade is kept or commodities sold, with only persons of the family residing on the premises employed, and with not more than 1/4 of the floor area of one story of the dwelling devoted to such home occupations.

Other home occupation requirements include:

- No mechanical equipment;
- No alterations internally or externally;
- No use of accessory structures;
- No neighborhood offensiveness;

Duluth explicitly permits the following home occupations by type (assuming they meet the general standards set out for home occupations in Section 50-1.38 of the City Code): artist's studio, dressmaking; office of a physician or dentist, lawyer, engineer, architect or accountant, and musical instruction limited to two pupils.

Types of home occupations expressly prohibited, regardless of whether they meet the standards of Section 50-1.38, include: barbershops, beauty parlors, tourist homes, restaurants, and tearooms.

Duluth's provisions on home occupations most closely resemble those of Bloomington.

Brooklyn Park

Home Occupations:

The City of Brooklyn Park regulates home occupations, like Minneapolis, through the concept of "indistinguishability." As long as a home occupation remains relatively indistinguishable from the adjacent neighboring community, a home occupation is permitted with certain restrictions and limitations. Brooklyn Park limitations include delivery times and traffic generation, residential status of employee, exterior appearance, traffic generation, parking, and a nuisance clause. Prohibited home occupations for the City of Brooklyn Park include: motor vehicle repair, service or painting. The repair or servicing of appliances is limited to "those appliances or other goods small enough to be carried by one person."⁵ A permit is required for all "vocations based in a dwelling unit." The permit is administrative in nature.

Plymouth

Home Occupations:

The City of Plymouth allows home occupations pursuant to Section 21145.01 of the City Code, which are clearly incidental to the residential dwelling unit, and which do not change the character of the premises.

Other requirements for permitted home occupations include:

- No nuisance to neighbors including light, odor, glare, etc.;
- No equipment creating electrical interference;
- No internal/external alterations to the dwelling unit;
- No exterior storage;
- No signage;
- Restricted hours of operation between the hours of 10 p.m. and 7 a.m.;
- No more than 25% of any story of the home used for the home occupation;
- Up to 50% of all accessory structures can be utilized for the home occupation; and
- No more than one customer per day.

Pursuant to Section 21145, a home occupation may procure an Interim Use Permit, good for one year and renewable for periods up to three years, and be classified as an Interim Home Occupation if it does not meet the current requirements for permitted home occupations contained in Section 21145.01.

⁵ Brooklyn Park City Code, Home Occupation Ordinance;

Examples of home occupations which are expressly mentioned as Interim Use Home Occupations include: massage therapy, barber and beauty shops, photography studio, lessons, and small appliance repair.

Home occupations expressly prohibited by the Plymouth Code include: auto repair, business and educational programs meeting on a regular basis with more than five non-residents, Gun sales and repair, and pet care facilities except for pet grooming.

Another type of home occupation classified by the City of Plymouth is the Home Office, which consists of a room or group of rooms used for business solely by the occupant, and which does not involve sales or patron visitations. Such home offices are permitted in all residential districts without the need for permit.

Eagan

Home Occupations:

The City of Eagan regulates home occupations in Section 11.03 as any use incidental to the principal residential use and which does not change the character of the premises.

Other home occupation requirements include:

- No more than three persons outside the home allowed to work more than full-time;
- No alterations internally or externally;
- No use of accessory structures;
- No neighborhood offensiveness;
- No signs permitted;
- No over the counter sales; and
- Entrances of the home occupation must be gained from within the principal structure.

Eagan does not expressly allow or prohibit any home enterprise by type of use. Rather, all home base businesses must comply with the same standards. There are no provisions for exemption.

Coon Rapids

Home Occupations:

The City of Coon Rapids regulates home occupations via home occupations that are permitted based on standard, and home occupations that must go through the conditional use permit process.

Permitted home occupations:

- Must be clearly incidental to the residence;
- Must be indistinguishable from the surrounding community;
- Must not occupy more than 25% of the dwelling unit or 500 sq. ft.;
- Must have only family members working for the business;
- Can't have mechanical equipment or any neighborhood nuisances;
- Can't have exterior storage;
- Must not take place in an accessory structure; and
- Must have only internal entrances to the business.

Permitted Home Occupations expressly permitted by Coon Rapids include: craft businesses, traveling salesperson, traveling cleaning service, and any operation without customer visits.

Home occupations that are not accessory uses may still be permitted through the conditional use process. Such home occupations allowed via the conditional use permit include: beauty shops, taxidermy, antique shops, tailor shops, photography studio, clock making, pet grooming, upholstery, accounting, and medical offices.

Coon Rapids expressly prohibits the following home enterprises by use type: repair of internal combustion engines over 12 horse powers; body shops, machine shops, welding, ammunitions manufacturing, flea markets, motor vehicle repair, service, or sale, tattoo parlors, or other “objectionable uses as determined by the City Council.”⁶

Burnsville

Home Occupations:

The City of Burnsville regulates home occupations, like others, through the concept of “indistinguishability.” As long as a home occupation remains relatively indistinguishable from the adjacent neighboring community, a home occupation is permitted with certain restrictions and limitations. Burnsville limitations include delivery times, residential status of employee, exterior appearance, traffic generation, parking, and a nuisance clause. Hours of operation are limited to the hours of 7:00 a.m. and 10:00 p.m. There are no prohibited home occupations for the City of Burnsville⁷.

St. Cloud

Home Occupations:

The City of St. Cloud regulates home occupations, like others, based on a set of required standards. St. Cloud limitations include delivery times, residential status of employee, exterior appearance, traffic generation, parking, and a nuisance clause. In addition, no more than 25% of the gross floor area of any one story may be utilized for the home occupation. Massage facilities that are exempt from the licensing requirements of Section 447 may be considered as a home occupation. The City of St. Cloud has no prohibited home occupations⁸.

No “special exception” processes is outlined in the St. Cloud City Code for home occupations which cannot meet the general home occupation standards

Eden Prairie

Home Occupations:

The City of Eden Prairie does not prohibit home occupations based on type. Rather, Eden Prairie regulates home occupations, like others, through the concept of “indistinguishability.” As long as a home occupation remains relatively indistinguishable from the adjacent neighboring community, a home occupation is permitted with certain restrictions and limitations. Eden Prairies limitations include delivery times, residential status of employee, exterior appearance, traffic generation, noise, odor, parking, and a nuisance clause. No process for “special exceptions” were found in Eden Prairies City Code for those home occupations unable to be the general requirements.

⁶ Coon Rapids City Code, Section 11.604.

⁷ Burnsville City Code, Section 10-12A-2 (Home Occupations);

⁸ St. Cloud Code of Ordinances, Article 13;

Comparative Summary:

1. The City of Bloomington, along with Rochester, Eagan, and Burnsville, Coon Rapids, and Brooklyn Park, allow for a process of “special exception” for those home occupations which do not conform to the general standards set out for home occupations as an accessory use. Bloomington’s TCUP process is functional despite the legality of its name.

A majority of cities require some kind of permitting process for any home enterprise which cannot satisfy the general standards for an accessory home occupation. Most cities utilize the Conditional Use Permit as the primary mechanism for granting exception for nonconforming home businesses but there are exceptions including Brooklyn Park’s “Permit for a Vocation in a Dwelling Unit,” Rochester’s two-tier standard process with Home Office Regulations, and Plymouth’s “Home Occupation Interim Use Permit.”

2. Bloomington differs from Rochester, Eagan, Burnsville, St. Cloud, and Eden Prairie by limiting home occupations based on use type (i.e. barber shops, beauty parlors, dog grooming, watch repair businesses, etc.) rather than by a standard set of limitations applicable to all types of home occupations (Bloomington utilizes both mechanisms as a means of restriction).

The cities of Rochester, Eagan, Burnsville, St. Cloud, and Eden Prairie do not regulate home occupations based on type. Rather, any home occupation, regardless of type, is permitted so long as all general standards for a home occupation are being met (most Codes are changing to this type of method).

3. The majority of cities examined allow home occupations as an accessory or permitted use in residential zoning districts which conform with the general home occupation standards contained in the various zoning codes. Cities like Bloomington, Minneapolis, St. Paul, and Duluth prohibit some types of home occupations regardless of their compliance with the general home occupation standards contained in the various zoning codes. A home occupation for therapeutic massage in the City of Bloomington, for example, must procure a TCUP regardless of whether it meets the general standards for a permitted accessory use in the home. A retail business in St. Paul, for example, is expressly prohibited as an accessory use to a home regardless of whether or not it meets the general standards set out for an accessory home occupation.
4. Some cities, like Duluth, Eagan, St. Cloud, and Eden Prairie, do not provide for a mechanism of “special exception” and do not allow home occupations to deviate from the general standards of accessory home occupations set forth in their respective Codes.
5. Other cities classify their home occupations by Type, and require a different administrative process according to Type (see Plymouth’s two-tier system).
6. Cities prohibiting home occupations based on type tend to prohibit the following types of home occupations regardless of their adherence to general home occupation zoning standards which are spelled out in their Codes: retail sales, motor vehicle repair, service or painting or any repair or servicing of vehicles, the sale, lease, or trade of firearms or ammunition, or stock in trade.
7. A majority of cities require all home occupations to be licensed by the City in addition to following the more general zoning standards set out for home occupations in their respective Codes.

In this comparative there were no cities, which only utilized the licensing process for the registration and approval of home occupations.

The following cities utilized both the licensing process and zoning regulations for the registration and approval of home occupations and other one-person businesses: St. Paul, Rochester, Brooklyn Park, Plymouth, Eagan, Coon Rapids, Burnsville, and St. Cloud.

The following cities did not require either a special license or special zoning permit for home occupations: Duluth, Eden Prairie, Minneapolis (as long as the home occupation met the general standards for accessory use in the respective residential zoning district.)

Conclusion:

Comments from City staff as well as the general public speak of concern over the ability to regulate home occupations if they are permitted as an accessory use in the R-1 zoning district, subject to the provisions set forth in Section 19.27. It is recommended that the Conditional Use Permit remain for those "Home Occupations" which cannot satisfy the standards contained in Section 19.27(c) (which will be moved to a new Section 19.63.09(B), but which still wish to pursue a legal existence. The Conditional Use Permit proposed is more malleable than the current process in that it provides a way for the City to place additional standards on those "Home Businesses" which, due to some special exception, cannot meet the accessory use standards, but which are not considered to be detrimental to the surrounding neighborhood.

For clarity sake, Attachment "A" provides a visual comparison of home occupation standard, both current and proposed, and more clearly delineates the scheme.

RECOMMENDATION

In Case 10000E-04, Staff recommends approval of an ordinance revising Chapter 19, Sections 19.03, 19.27, 19.27.01, 19.40.09, and 19.63.09 of the City Code, regarding home enterprises.

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