

## STAFF REPORT

**HOME OCCUPATION ZONING TEXT AMENDMENT**

October 11, 2022

**BACKGROUND:**

On June 14<sup>th</sup>, 2022, Governor Reynolds signed into law House File 2431, which pertains “to the regulation of home-based businesses”. The Ames Zoning Ordinance refers to home-based businesses as home occupations (they are otherwise the same). The new regulations preempt certain local laws and limit how a city can regulate home-based businesses, principally regarding “no-impact” businesses. In order to continue to apply standards to home based occupations, the City must modify its zoning standards to comply with state law.

Home occupations are considered a secondary or accessory function to the primary use of a home as a residence. An occupant of the residence must be employed at the business. Home occupations currently are allowed in all residential zoning districts subject to permitting requirements and performance standards of Article 13 of the Zoning Ordinance. Generally, a large range of uses are permissible with review by the Zoning Board of Adjustment.

The current Ames code (*Attachment A*) contains lists of specific uses, such as catering, day care, engineering office, beauty parlors. The code categorizes allowable uses into those that are Permitted, which are reviewed through an administrative process (\$25 fee), and those that are Special, which are reviewed through a public process by the Zoning Board of Adjustment (\$75 fee). The code also contains a prohibited uses section, such as auto repair, firearm sales, kennels, restaurants, dance studios. The City does apply certain standards to home occupations regarding limitations of up to 10 vehicle trips a day, class sizes, storage, equipment usage, etc.

**The new state law (*Attachment B*) does not allow cities to regulate home-based businesses by use (with some exceptions), but does allow them to regulate by intensity of use and potential impacts to a neighborhood, including parking on the street and any noise, odor, or pollution emanating from the property in question.**

The statute, in part, reads:

*A city shall not prohibit a no-impact home-based business or otherwise require a person to apply, register, or obtain any permit, license, variance, or other type of prior approval from the city to operate a no-impact home-based business.*

The state law defines a “no-impact home-based business” as one that, essentially, is operated within a building or in a yard out of view from surroundings and does not create any negative impacts on the surrounding neighborhood or surrounding properties. **If a business is classified as no-impact home-based business, the City of Ames may**

**not require any permit or other review: it is allowed by right. If the City receives complaints about the no-impact home-based business, staff can investigate to see if the use is complying with the state criteria pertaining to impacts and intensity of use. The City cannot require a permit for such a use before it begins to operate.**

**Under the new law, cities may still require permits for home occupations that are not no-impact home-based businesses** (in other words, those home occupations that may be impactful). Potentially impactful home businesses would be similar to our current method of categorizing some uses as Specially Permitted Home Occupations.

The new law appears to significantly change the regulation of home occupations. However, its intent is similar to our current Permitted and Specially Permitted approach for home occupations. **After consultation with the City Attorney and the Inspections Division, staff believes that adjustments to our approach can be made to continue to apply regulations to home occupations. New standards would have to address the state law requirements and provide performance thresholds to assess impacts to a neighborhood. The City can be more permissive than the state law, but not more restrictive.**

Potential Criteria:

The following is a list of potential standards that could apply to home occupations based upon either our current standards or the new state law language. New home occupation standards would define the amount of property and buildings to be used, location of activity, amount and size of signage, employee and customer counts related to building occupancy, off-site employees, traffic and parking, and day care regulations. The example criteria below would allow for all uses that have been categorized as “permitted” previously by the City and uses “specially permitted” by the ZBA.

Proposed criteria:

1. Area to Be Used. *(New standard to address state law)*
  - a. Less than 50% of all the habitable space of all buildings (considered cumulatively) on the property may be used for the home occupation. Habitable space does not include unhabitable attics, unhabitable basements, garden sheds, chicken coops, etc. It does include attached and detached garages.
  - b. Less than 50% of the total yard area may be used.

2. Nuisance. *(This is the current language.)*

The activity shall be conducted in a manner that will not alter the normal residential character of the premises, or in any way cause a nuisance to adjoining residents, nor shall there be any structural alteration to accommodate the occupation. There should be no emission of smoke, dust, odor, fumes, glare, noises, vibration, electrical or electronic disturbances detectable at the lot line that would exceed that normally produced by a single residence. Special noise exceptions will be allowed for day care homes due to the nature of the clients using the facility.

3. Location. *(New standard to address state law)*  
Any home occupation activity that takes place in the yard must be screened behind a solid, 6-foot-high fence. *(Practically, this will mean that all activity will take place in a rear or side yard, as this is the only location where a fence can be as tall as 6 feet.)*
4. Signage. *(This is the current language.)*  
Any sign utilized at the home occupation shall be limited to one flush-mounted sign on the main residential structure, which shall not exceed one (1) square foot in area. Such sign shall not be lighted and nonreflecting materials shall be used. The legend shall show only the name of the occupant and the type of occupation. Color shall be consistent with the residential character.
5. Occupancy Maximums. ***(New issue identified within the state law for No Impact businesses, previously we addressed as employees and class size limitations)***  
The occupancy of a dwelling unit for purposes of home occupations maximum levels of employee and customer counts is the Zoning Ordinance definition of a family:  
  
Section 29.201 (72) Family means a person living alone, or any of the following groups living together as a single nonprofit housekeeping unit and sharing common living, sleeping, cooking, and eating facilities: (a) Any number of people related by blood, marriage, adoption, guardianship or other duly authorized custodial relationship; (b) Three unrelated people (i.e. *adults*);
6. Traffic. *(This is the current language.)*  
The activity shall not generate significantly greater traffic volumes than would normally be expected in a residential area. Not more than 10 vehicular visits per day shall be allowed. An exception to the number of visits allowed per day may be permitted for family day care homes and adult day care due to the number of children or adults allowed on-site and the need for parent or caregiver contact during the day. The delivery and pick up of materials or commodities to the premises by commercial vehicles shall not interfere with the delivery of other services to the area.
7. Parking. *(This is the current language.)*
  - a. Only one delivery vehicle associated with the activity may be parked on the street near the premises for not more than 4 consecutive hours.
  - b. One additional on-site parking space is required above the normal parking requirement where two (2) or more clients are likely to visit the premises concurrently.
  - c. No more than four (4) client vehicles during any given hour shall be allowed on the site. This requirement shall not be construed to prohibit occasional exceptions for such events as meetings, conferences, demonstrations, or similar events that are in no way a nuisance to adjoining residences.
8. Class Size. *(This is the current language, to be adjusted with final changes to comply with No Impact criteria )*

If the home occupation is the type in which classes are held or instructions given, there shall be no more than four (4) students or pupils at any given time. The Board may approve up to six (6) students if it finds that the additional students will not generate additional traffic. Day-care homes may have up to six (6) children or adults at a time. Additional children or adults will require a Special Home Occupation Permit for a day-care center.

9. Family Day Care in Multifamily Dwellings. *(This is the current language.)*  
In addition to the criteria of Section 29.1304(3), Family Day Care in multifamily dwellings shall comply with the following additional criteria.
- a. A defined outdoor play area is available on-site that provides not less than 75 square feet per child based on the maximum number of children that will be attending the day care at any given time, or a public or neighborhood park is located within 300 feet of the site. This provision only applies to day care provided to children five years of age and older.
  - b. An area designated and posted for guest parking is provided on the site; or at least one (1) parking space must be posted and reserved for use of the day care operation only. Parking spaces otherwise required to meet minimum parking requirements for the residents may not count toward the required guest or reserved parking spaces.
  - c. The day care operator must provide evidence that the owner of the multifamily building has no objections to the day care operation, and that he or she agrees to comply with the required guest or reserved parking provisions.

### **OPTIONS:**

**The new law focuses on potential negative impacts and not on specific uses, with limited exceptions. After careful review of the new state code, staff believes that most of our current zoning criteria in Section 29.1304(3) & (4) may be carried over into a rewritten ordinance as shown in the example criteria. The subsections pertaining to specific uses, however, must be removed with any changes. The City may still be able to establish a prohibited use list, this would be reviewed further with the City Attorney's office.**

Staff believes there are two basic options to revise the standards. Option 1 would change the whole system to make all uses that meet the criteria allowed "by right" and no use would be allowable that exceeded the criteria. A second option is to follow a system similar to the current where a threshold of performance is set for "no impact" business that do not need a permit and that all other potentially impactful businesses would require ZBA approval.

### ***Option 1: Allow Home Occupations by Right Subject to Performance Criteria***

**City Council could establish criteria by which all home occupations must comply. No permits would be required, but enforcement of complaints could occur based upon the established criteria.** It would be important to only adopt criteria that would reasonably allow for use of home occupations without potentially significantly impacting

a neighborhood. The example criteria in this report are very similar to the current maximum intensity of uses that have been seen to be reasonable allowances in the past.

If City Council selects this option, staff would work to draft an ordinance based upon the example draft criteria in this report and proceed to the Planning and Zoning Commission for their recommendation on a zoning text amendment. City Council could also give direction about specific criterion to be changed before proceeding to prepare a draft ordinance.

### ***Option 2: Two Category System for 1) No Impact and 2) Impactful Home Business***

**This option would set criteria for what state law requires to be permitted for the No Impact category. Businesses in the No Impact category would have no review by City staff or permit required. Should a business owner desire to exceed the No Impact criteria, then the business owner can pursue a permit and approval from ZBA as an Impactful Home Business.**

If Council selects the same draft criteria included in this report to distinguish No Impact from Impactful, it would effectively be expanding opportunities for home occupations beyond current allowances for uses approved by the ZBA. If the City Council does not intend to expand the allowances it would need to alter the draft criteria to trigger ZBA approval at a lower threshold. If City Council is interested in this option and it wanted to have lower thresholds it would need to provide direction to staff in order to proceed with drafting an ordinance.

Once City Council provides direction, staff would work to draft an ordinance based upon the example criteria in this report and proceeding to the Planning and Zoning Commission for their recommendation on a zoning text amendment.

### **STAFF COMMENTS:**

The current regulations governing home occupations need to be rewritten to comply with state law. The City may no longer regulate home occupations by use, but may still control factors, such as odors or noises, that may emanate from such a use.

**Staff finds that Option 1 would be the easiest to administer as it does not involve permitting. This option would result in similar types of home occupations as have been approved in the City, however there would be no permit in advance.** This option would remove notice requirements that are part of permitting now for specially permitted home occupations. However, most home occupation permits based upon our current criteria are non-controversial. On a rare occupation there have been complaints about people not complying with the performance standards and there have been enforcement actions.

Option 2 would have one category of by right uses as No Impact, but still require a permit and a review process for those home occupations that have may be impactful to their respective neighborhoods. Administration of this option would be very similar to the current processes of the City with the ZBA approvals. **If City Council were to adopt the**

**draft criteria in this report it would actually provide additional home occupation opportunities by ZBA approval of uses that exceed the stated thresholds.**

**Staff supports making changes to clarify for the customers what are the City's expectations. Staff believes Option 1 would likely be satisfactory for regulating such uses based upon our experience of permitting home occupations with or without ZBA review over the past ten years.**

**Attachment A**  
**Zoning Code Requirements for Home Occupations**

**Sec. 29.1304. HOME OCCUPATIONS.**

This Section is intended to protect residential areas from potential adverse impacts of activities defined as home occupations; to permit residents of the community a broad choice in the use of their homes as a place of livelihood in the production or supplementing of personal/family income; to restrict incompatible uses; to establish criteria and develop standards for the use of residential structures or dwelling units for home occupations. It is not the intent to eliminate certain businesses and occupations that may be compatible with residential areas.

- (1) Permitted, Special and Prohibited Home Occupations.
  - (a) The following are Permitted Home Occupations:
    - (i) Home sewing or tailoring;
    - (ii) Studios for painting, sculpturing, ceramics or other similar arts;
    - (iii) Writing or editing;
    - (iv) Telephone answering, scheduling of appointments, and other office activities where there are limited visits to the home;
    - (v) Production of crafts such as handiwork, model-making, weaving, lapidary, and cabinet-making for the purpose of selling the product;
    - (vi) Tutoring and giving lessons, limited to 4 students at any one time;
    - (vii) Catering, home-cooking and preserving for the purpose of selling the product;
    - (viii) Computer programming, services provided over the Internet and other similar activities;
    - (ix) Mail order businesses where products are shipped directly from the supplier to the customer; and
    - (x) Offices for architects and engineers.
    - (xi) Home child care providers designated by the state department of human services as either Non-Registered Home, Child Development Home “A”, or Child Development Home “C” (1 Provider).
  - (b) The following are Special Home Occupations:
    - (i) Home child care providers designated by the state department of human services as either Child Development Home “B”, or Child Development Home “C” (2 Providers). Child care providers designated by the state department of human services as a “Licensed Center” are not eligible for approval as a Home Occupation.
    - (ii) Home adult day care for the care of no more than six adults (not permanent residents).
    - (iii) Physicians and other licensed medical practitioners;
    - (iv) Barbershops and beauty parlors;
    - (v) Small repair shops (including small appliances, mower repair, blade sharpening and similar uses);
    - (vi) Real estate and related services;
    - (vii) Insurance agents;
    - (viii) Home professional offices, lawyers and members of similar professions, and
    - (ix) All other activities not included on either the permitted or prohibited list.
  - (c) The following are prohibited Home Occupations;
    - (i) Animal hospitals;

- (ii) Dancing studios or exercise studios;
  - (iii) Private clubs;
  - (iv) Restaurants;
  - (v) Stables and kennels;
  - (vi) Repair or painting of motor vehicles, including motorcycles; and
  - (vii) Firearm sales
- (d) Rummage/garage sales are not included in the listing of permitted, special or prohibited home occupations and are not defined as home occupations, provided no more than 3 sales per year are conducted. In addition, sale of garden produce is not defined as a home occupation provided no more than 3 sales per year are conducted.
- (2) Permit and Review Procedures.
- (a) Permitted Home Occupations. Applicants must submit an application to the Planning and Housing Department. The application will be reviewed by the staff, and the applicant will be notified of the decision of the Department. If the applicant is aggrieved, the decision may be appealed to the Zoning Board of Adjustment within 30 days.
  - (b) Special Home Occupations. Applicants must submit a Special Home Occupation Permit to the City Clerk for consideration by the Zoning Board of Adjustment. Applications will then be reviewed by the Planning and Housing Department. A staff report will be prepared and sent to the Zoning Board of Adjustment.  
The Board may grant the Special Home Occupation Permit if it reasonably concludes from the evidence that the home occupation proposed will meet the criteria set out in Section 29.1304(3). The Board may, if warranted by the evidence, impose such additional conditions as may be deemed necessary to protect the legitimate use and enjoyment of neighboring properties. Any failure to obtain such Special Home Occupation Permit when required, or to comply with the criteria and conditions set out when issued, shall constitute a violation of this Section and shall be grounds for revocation of the Special Home Occupation Permit after notice and hearing by the Zoning Board of Adjustment.
  - (c) Prohibited Home Occupations. No person will be allowed to operate prohibited home occupations.
- (3) Criteria. All home occupations must meet the following criteria:
- (a) Area to Be Used.
    - (i) The activity shall be conducted in a manner that will not alter the normal residential character of the premises, or in any way cause a nuisance to adjoining residents, nor shall there be any structural alteration to accommodate the occupation. There should be no emission of smoke, dust, odor, fumes, glare, noises, vibration, electrical or electronic disturbances detectable at the lot line that would exceed that normally produced by a single residence. Special noise exceptions will be allowed for day care homes due to the nature of the clients using the facility.
    - (ii) The activity shall be located within the principal building or within an accessory structure. It shall occupy no more than 25% of the total floor area of the residence and shall not exceed 400 square feet of an accessory building. Exception: For family day care homes, the entire dwelling unit may be used to serve the various needs of day care (e.g., kitchen, bathroom, napping rooms, play areas, etc.). However, the day care can provide care to no more than one person per 35 square feet of the total dwelling unit, exclusive of baths, hallways, closets, kitchens, and dining areas. The dining area may be included in the square footage calculation if used by day care participants for activities other than meals.



- (b) Signs. Any sign utilized at the home occupation shall be limited to one flush-mounted sign on the main residential structure, which shall not exceed one square foot in area. Such sign shall not be lighted and nonreflecting materials shall be used. The legend shall show only the name of the occupant and the type of occupation. Color shall be consistent with the residential character.
  - (c) Equipment. There shall be no mechanical equipment used except as customary for domestic household purposes. Any merchandise or stock in trade sold, repaired or displayed shall be stored entirely within the residential structure or in any accessory building. No storage is to be visible from lot lines.
  - (d) Employment. The activity shall employ only members of the household residing in the dwelling unless approval for the employment of up to two (2) non-family members is granted by the Zoning Board of Adjustment.
  - (e) Traffic. The activity shall not generate significantly greater traffic volumes than would normally be expected in a residential area. Not more than 10 vehicular visits per day shall be allowed. An exception to the number of visits allowed per day may be permitted for family day care homes and adult day care due to the number of children or adults allowed on-site and the need for parent or caregiver contact during the day. The delivery and pick up of materials or commodities to the premises by commercial vehicles shall not interfere with the delivery of other services to the area.
  - (f) Parking Criteria.
    - (i) Only one delivery vehicle associated with the activity may be parked on the street near the premises for not more than 4 consecutive hours.
    - (ii) One additional on-site parking space is required above the normal parking requirement where 2 or more clients are likely to visit the premises concurrently.
    - (iii) No more than 4 client vehicles during any given hour shall be allowed on the site. This requirement shall not be construed to prohibit occasional exceptions for such events as meetings, conferences, demonstrations, or similar events that are in no way a nuisance to adjoining residences.
  - (g) Class Size. If the home occupation is the type in which classes are held or instructions given, there shall be no more than 4 students or pupils at any given time. The Board may approve up to 6 students if it finds that the additional students will not generate additional traffic. Day-care homes may have up to 6 children or adults at a time. Additional children or adults will require a Special Home Occupation Permit for a day-care center.
  - (h) Number of Home Occupations. The total number of home occupations within a dwelling unit is not limited, except that the cumulative impact of all home occupations conducted within the dwelling unit shall not be greater than the impact of one home occupation. This will be determined by using the home occupation criteria.
- (4) Family Day Care in Multifamily Dwellings. In addition to the criteria of Section 29.1304(3), Family Day Care in multifamily dwellings shall comply with the following additional criteria.
- (a) A defined outdoor play area is available on-site that provides not less than 75 square feet per child based on the maximum number of children that will be attending the day care at any given time, or a public or neighborhood park is located within 300 feet of the site. This provision only applies to day care provided to children five years of age and older.
  - (b) An area designated and posted for guest parking is provided on the site; or at least one parking space must be posted and reserved for use of the day care operation only. Parking spaces otherwise required to meet minimum parking requirements for the residents may not count toward the required guest or reserved parking spaces.

- (c) The day care operator must provide evidence that the owner of the multifamily building has no objections to the day care operation, and that he or she agrees to comply with the required guest or reserved parking provisions.

**Attachment B**  
**Newly Adopted State Code Regulating Home-Based Businesses**

**Sec. 414.33**

1. For the purposes of this section:
  - a. “Goods” means any merchandise, equipment, products, supplies, or materials.
  - b. “Home-based business” means any business for the manufacture, provision, or sale of goods or services that is owned and operated by the owner or tenant of the residential property on which the business operates.
  - c. “No-impact home-based business” means a home-based business for which all of the following apply:
    - (1) The total number of on-site employees and clients does not exceed the city occupancy limit for the residential property.
    - (2) The business activities are characterized by all of the following:
      - (a) The activities are limited to the sale of lawful goods and services.
      - (b) The activities do not generate on-street parking or a substantial increase in traffic through the residential area.
      - (c) The activities occur inside the residential dwelling or in the yard of the residential property.
      - (d) The activities are not visible from an adjacent property or street.
2. The use of a residential property for a home-based business is a permitted use. However, this subsection does not supersede any of the following:
  - a. A deed restriction, covenant, or agreement restricting the use of land.
  - b. A master deed, bylaw, or other document applicable to a common interest ownership community.
3. A city shall not prohibit a no-impact home-based business or otherwise require a person to apply, register, or obtain any permit, license, variance, or other type of prior approval from the city to operate a no-impact home-based business.
4. A city may establish reasonable regulations on a home-based business if the regulations are narrowly tailored for any of the following purposes:
  - a. The protection of the public health and safety, including rules and regulations related to fire or building codes, health and sanitation, transportation or traffic control, solid or hazardous waste, pollution, or noise control.
  - b. Ensuring that the business is all of the following:
    - (1) Compatible with residential use of the property and surrounding residential use.
    - (2) Secondary to the use of the property as a residence.
    - (3) Complying with state and federal laws and paying applicable taxes.
  - c. Limiting or prohibiting the operation of a home-based business for the purposes of selling alcoholic beverages or illegal drugs, operating or maintaining a structured sober living home, creating or selling pornography, providing nude or topless dancing, or operating any other adult-oriented business.
5. A city shall not require as a condition of operating a home-based business that the property be rezoned for commercial use or that the business owner install or equip fire sprinklers in a single-family detached residential dwelling or any residential dwelling with not more than two dwelling units.
6. In any proceeding alleging that a city regulation does not comply with this section, the city that enacted the regulation must establish by clear and convincing evidence that the regulation complies with this section.