

City of Huntington Planning Commission

June 18th, 2020

Staff Report: A petition to amend Article 1341 General Regulations regarding Home Occupations and Article 1357 Filing Fees.

Legal Ad

PC 20-13

A petition to amend Article 1341 General Regulations regarding Home Occupations and Article 1357 Filing Fees.

Petitioner: City of Huntington, 800 5th Ave, Huntington, WV 25701

Introduction

City of Huntington is petitioning to amend the rules for Home Occupations to include adjusting the fees paid for some or all approved applicants.

Existing Regulations

The existing Home Occupation regulations have been sufficient for the proper regulation of home based businesses. The wording and organization of the Home Occupation regulations is somewhat deficient and should be addressed for clarity to ensure fair and continued adequate enforcement for all Home Occupations.

Although the office has not received a formal complaint for any licensed Home Occupations, there may be opportunity for one to create a nuisance for adjacent property owners.

Proposed Regulations

There are several key parts of the proposed regulations. They are:

- Re-organization of the regulations for clarity and ease of use
- Addition of Special Notice Permitted Uses
- Clarity of the appeal process for denied applications
- Clarified parking requirements
- Expansion of defining a nuisance relating to Home Occupations
- A Permitted Use chart
- Newly defined uses related only to Home Occupations
- Created a map a requirement of all licensed Home Occupations that must be maintained and made available to the public

Staff Comments

Many of the proposed changes for the Home Occupation ordinance will be significant improvements that will help with both customer service and enforcement. The clarified nuisance definitions and clarified uses will be a benefit for all stakeholders.

The required map may help in a couple of different ways. It will help stakeholders verify a business is lawfully operating. It will also help neighbors know what services may be available nearby, such as a one chair salon within walking distance.

The staff does hold concern on increasing the burden upon applicants to gain approval

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through the Special Notice Permitted Uses option. It is currently the intent of this draft ordinance that applicants will be required to pay for public noticing of their approval to occupants of properties with 250 feet of their Home as well as cover the cost of anyone who wishes to file an appeal to their approved application. Typically those wishing to file appeals must bear the financial burden. The Special Notice Permitted Use fee, currently proposed to be \$40 dollars, will be in addition to all other fees and licenses due to the city. We have estimated the \$40 to be the minimum needed in most circumstances.

An applicant who necessitates a Special Notice Permitted Use shall also leave a check with the Planning office for the cost of an appeal (\$160) in case there is concern from the neighbors. If there are no concerns with the neighbors who receive a letter than those funds are not spent.

Such notice will also increase the burden upon the Planning and Zoning office for notification and take time away from other key tasks.

The staff has concerns that making in home Day Cares and businesses with 1 employee who lives outside the home pay additional fees and be subject to additional scrutiny may be unnecessary. We have no record of formal complaints against either Day Cares or Home Occupations with an additional employee over the last several years. Instead of preventing a potential nuisance, this may deter applicants from applying in the first place and cause a loss in B&O revenue for the city.

It is the preference of the staff that the rules of the ordinance be well crafted to address any issues proactively or through enforcement, rather than placing additional burden up front on potential business owners and the Planning and Zoning office staff.

For these reasons, we are asking the commissioners to discuss the benefits, concerns, and further potential amendments to the Home Occupation regulations. This is a draft, and the staff is anticipating needed changes.

Attachments

Please see attached draft ordinance for reference.

This is a draft and is subject to further changes before the Planning Commission meeting and during the Planning Commission meeting. The intent of this draft is to inform the public of considered changes to the rules and regulations of Home Occupations.

Section 1341.22 Home Occupation

- A. Permit. A permit from the Planner or designee shall be required for any Home Occupation, in addition to any other licenses or permits required by the city, county, or state.
1. Special Notice Permitted Uses. If the Home Occupation is located in a residential district and is listed as a Special Notice Permitted Use, after an application is approved, notice shall be issued to occupants of all structures within 250 feet, measured from the edge of the property where the Home Occupation is located. The notice shall inform the occupants of the structures within the specified distance that a Home Occupation has been approved, the name of the business, the address, the type of permitted use, the number of employees who permanently reside offsite, and any other information deemed relevant by the Planner. The notice shall also include a description of the appeal rights of the recipient of the letter. The applicant shall include a check for the cost of the Special Notice Permitted Use and a check for the cost of an appeal that shall be held by the Planning and Zoning Office and cashed in the event that an appeal of the approval of the permit is filed with the Planning and Zoning within 30 days of the permits issuance.
 2. Denial. The staff may deny a permit application if it is believed that the proposed use does not meet the requirements for a Home Occupation.
 3. Appeal. If the staff denies a petition, the petitioner may file with the Board of Zoning Appeals for an appeal of the decision of the staff.
- B. Location and Size.
1. A home occupation shall be conducted completely indoors, and may be within a principal or accessory building.
 2. The total amount of floor area of all buildings used for a home occupation shall not be greater than 25 percent of the total floor area of the principal dwelling unit.
 3. There shall be no outdoor operations or outdoor storage of materials, products or equipment.
- C. Hours. A home occupation shall not be conducted in a way that is perceptible from beyond the lot line between the hours of 9 p.m. and 7 a.m. This time limit shall also apply to any loading or unloading of vehicles on the property or on a street that causes noise to adjoining residents.
- D. Number of Employees. No employees who are not permanent residents of the dwelling may work on the premise, except for businesses that involve field or on-site service, including salesmen, plumbers, cleaners, home repair, online services and other similar service activities. Such home occupations may employ up to four persons, provided that the home occupation may have 1 Full Time Equivalent employee work at the home office. For the purposes of the Home Occupation Full-Time Equivalent may include up to four employees provided that no more than one employee works on-site at any given time. A Home Occupation may apply for a Special Notice Permitted Use to have more than one (1) employee at the home office provided it is found that based on physical characteristics of the lot the additional employees would not detract from the residential character.
- E. Parking, Loading, and Unloading Requirements.

1. Parking Spaces. The lot shall include sufficient parking for the maximum number of vehicles on-site at one time, plus parking for the dwelling unit. A minimum of one (1) parking space shall be supplied for Personal Services businesses that intend to see customers at the residence.
 - i. Exemption. If the lot where the Home Occupation is located at has at minimum forty (40) feet of curb available for on street parking, the one (1) parking space requirement for Personal Services is exempted.
2. Parking Location. The parking shall be located on the property in accordance to Article 1343 and any additional standards for the zoning district that the Home Occupation is within.
3. Driveway. A defined driveway shall be provided, and shall be shown on the site plan. The applicant shall prove that such driveway provides for safe sight distance. The driveway shall be located on the property in accordance to Article 1343 and any additional standards for the zoning district that the Home Occupation is within.
4. Vehicles. The use shall not require the parking of, storage of or regular servicing by a vehicle with an aggregate gross vehicle weight of more than 12,000 pounds, except for one vehicle used by a resident whose primary occupation is as an over-the-road driver of such vehicle. Such vehicle shall be parked off-street beyond the front of the house. While parked on the residential lot, such vehicle shall not generate noise beyond the limit set forth in the city code.

F. Signs and Displays.

1. There shall be no use of show windows, business display or advertising visible from outside the premises, except for one non-illuminated sign with a maximum sign area of two square feet on each of two sides and a maximum height of six feet.

G. Building Appearance. The exterior of the residential building and the lot shall not be changed in such a way as to decrease its residential appearance, except for permitted parking spaces and the permitted sign.

H. Nuisances. All Permitted Home Occupations shall be in compliance with all applicable nuisance laws within the City Code and those listed in this section. A nuisance, in addition to how it is defined elsewhere in the City Code, shall mean the unreasonable, unwarranted and/or unlawful use of property, which causes inconvenience or damage to others, either to individuals and/or to the general public. The following are additional nuisance requirements for Home Occupations.

1. Sensory Nuisance. No Home Occupation shall produce noise, noxious odor, smoke, dust, vibration, glare, electrical interference, or radio or electromagnetic interference that is perceptible beyond the property line. No use shall generate noise in excess of what is allowed by City Code, Section 527.
2. Physical Impacts on Land. No Home Occupation shall cause physical impacts to other properties, either private or public, to include the following: misdirection of water, pollution of soil, pollution of waterways, pollution of water tables, raising of water tables, vibration or damage of structures, destruction of vegetation, keeping of diseased animals, or retention of still water.

3. Permitted Equipment. Only general types and sizes of machinery that are typically found in dwellings for hobby, domestic, or sewing purposes shall be permitted. Equipment for Skilled Trade Services shall not be stored outside.
 4. Hazardous Substances. The use shall not involve the storage or use of hazardous, or flammable substances, other than types and amounts commonly found in a dwelling. Home Occupations shall not store, sell, or transfer fireworks, gunpowder, or other explosive materials.
 5. Automobiles. No Home Occupation shall store automobiles in the outdoor space of the property that are rusted, junked, disassembled, or have expired or missing state inspection stickers or license plate. Home Occupations which require the use of an automobile shall be limited to one vehicle at the permitted location, to include parking on the adjacent public right-of-way, of the Home Occupation bearing the name, logo, copy, or other graphics related to the business.
- I. Permitted Uses. The chart in this section lists all permitted uses, conditional uses, and use-specific standards. Below the chart are defined uses only relevant to Home Occupations.

Legend	
Permitted Use	●
Special Notice Permitted Use	○
Prohibited Use	

Table 1341.22.A: Permitted Uses

Home Occupation Types		Use-Specific Standards
Day Care (Child or Adult)	○	1341.13 & 1341.09
Offices	●	
Manufacturing and Sales, Artisan (Mail or Online Sales Only)	●	
Nanobrewery	●	1341.50
Personal Services, Home Occupation	○	1341.22.J.1
Retail Sales and Services (Mail or Online Sales Only)	●	
Repair Services	●	1341.22.J.2
Skilled Trade Services	●	1341.22.J.3
Tutoring Services	●	1341.22.J.4
Home Occupation with Employees On Premise Who Do Not Reside Permanently on Premise	○	
Below Are Uses That Are Not Permitted And Are Listed Because Of Their Likeness to Those Listed Above		
Animal Hospital / Clinic		
Auto Service Station		
Automobile and Other Vehicle Sales and Services		
Car Wash		

Home Occupation Types	Use-Specific Standards
Industrial Uses Listed in the Industrial Section of Article 1320	Table 1320.A
Kennel	
Medical Office	
Restaurant	
All Other Uses Not Listed in This Section	

J. Home Occupation Specific Definitions and Additional Regulations.

1. **Personal Services, Home Occupation.** An establishment that provides a service oriented to personal needs of the general public and which does not involve retail or wholesale sales or service to businesses. Personal services include barber and beauty shops, massage therapy, photography studios, and other similar establishments. Barber, beauty shops, massage therapy, and uses similar as determined by the Planner are limited to one (1) hair cutting chair or message table.
2. **Repair Services.** A personal service for the repair of goods such as appliances, watches, bicycles, and other common items. Items may be repaired at the Home Occupation location or off-site. Repair of large items such as appliances must be done offsite from where the Home Occupation is located. Inoperable, partially assembled, or spare appliances or other large goods related to the Home Occupation shall not be stored at the location of the Home Occupation.
3. **Skilled Trade Services.** A business which provides services such as bricklaying, carpentry, electrical repair and installation, plumbing, pipefitting, welding, painting, HVAC repair and installation, and similar trades as determined by the Planner. These trades are conducted offsite from the Home Occupation. The storage of all tools and equipment shall be done indoors, aside from a single vehicle bearing the logo, name, copy, or other graphics of the business.
4. **Tutoring Services.** A personal service in which one instructor who gives additional, special, or basic instruction to not more than four (4) students on premise at any one time. This shall include instruction with musical instruments.

K. Map. The City shall maintain a map of all licensed Home Occupations within the City of Huntington and make that map available to the public either upon request or constant access via the internet. The map shall indicate on which parcel the Home Occupation is located as well as the name of the business, the date the permit was issued, and other relevant information as determined by the Planner.

- ~~A. A home occupation shall be conducted completely indoors, and may be within a principal or accessory building. The total amount of floor area of all buildings used for a home occupation shall not be greater than 25 percent of the total floor area of the principal dwelling unit.~~
- ~~B. There shall be no outdoor operations or outdoor storage of materials, products or equipment.~~
- ~~C. Signs and Displays. There shall be no use of show windows, business display or advertising visible from outside the premises, except for one non illuminated sign with a~~

maximum sign area of two square feet on each of two sides and a maximum height of six feet.

- ~~D. Truck Traffic. The use shall not require the parking of, storage of or regular servicing by a vehicle with an aggregate gross vehicle weight of more than 12,000 pounds, except for one vehicle used by a resident whose primary occupation is as an over-the-road driver of such vehicle. Such vehicle shall be parked off street beyond the front of the house. While parked on the residential lot, such vehicle shall not generate noise beyond normal neighborhood levels.~~
- ~~E. Uses permitted as a home occupation include, but are not limited to: art studio, home craft businesses (including home craft brewery production (nanobrewery) in accordance with 1341.50), dressmaking, furniture making, office, custom sewing, clerical work, sales or survey over the telephone, tax preparation, musical instruction, tutoring of students, personal service businesses, trade businesses provided there is no on-site assembling, manufacturing, processing, or retail sales, repair service, day care in accordance with Section 1341.13, or one chair beauty or barber shop with no products sold from the premise.~~
- ~~F. The following uses shall not be permitted as a home occupation: veterinarian office, stable, kennel, funeral home, industrial uses (other than custom crafts and sewing), wholesale or retail sales on the premises (except as accessory to custom crafts and except for sales over the phone, through the mail, or online), restaurant, repairs of motor vehicles or trucking company terminal, manufacturing, or repair of machinery, automobiles, trucks, and motorcycles.~~
- ~~G. Nuisances. No machinery or equipment shall be permitted that produces noise, noxious odor, vibration, glare, electrical interference or radio or electromagnetic interference beyond the boundary of the property. Only general types and sizes of machinery that are typically found in dwellings for hobby, domestic or sewing purposes shall be permitted. No use shall generate noise or glare in excess of what is typical in a residential neighborhood.~~
- ~~H. Parking and Loading. The lot shall include sufficient parking for the maximum number of vehicles on-site at one time, plus parking for the dwelling unit. A defined driveway shall be provided, and shall be shown on the site plan. The applicant shall prove that such driveway provides for safe sight distance.~~
- ~~I. Building Appearance. The exterior of the residential building and the lot shall not be changed in such a way as to decrease its residential appearance, except for permitted parking spaces and the permitted sign.~~
- ~~J. Hours. A home occupation shall not be conducted in a way that is perceptible from beyond the lot line between the hours of 9 p.m. and 7 a.m. This time limit shall also apply to any loading or unloading of vehicles on the property or on a street that causes noise to adjoining residents.~~
- ~~K. Hazardous Substances. The use shall not involve the storage or use of hazardous, flammable or explosive substances, other than types and amounts commonly found in a dwelling.~~
- ~~L. Advertising. The address of the home occupation shall not be advertised in such a way that would encourage customers or salespersons to come to the property without an appointment.~~

- ~~M. Number of Employees. No employees who are not permanent residents of the dwelling may work on the premise, except for businesses that involve field or on site service, including salesmen, plumbers, cleaners, home repair, online services and other similar service activities. Such home occupations may employ up to four persons, provided that the home occupation may have 1 Full Time Equivalent employee work at the home office. For the purposes of the Home Occupation Full Time Equivalent may include up to four employees provided that no more than one employee works on site at any given time. A Home Occupation may apply for a Special Permit to have more than one (1) employee at the home office provided it is found that based on physical characteristics of the lot the additional employees would not detract from the residential character.~~
- ~~N. Instruction. Any instruction or tutoring shall be limited to a maximum of four students on the property at any one time.~~
- ~~O. A permit from the Planner or designee shall be required for any home occupation.~~

ARTICLE 1357 - FILING FEES

Application and petitions filed pursuant to the provisions of this ordinance shall be accompanied by the filing fees hereafter specified.

- A. For each application for a Certificate of Occupancy, a fee of **Seventy-Five Dollars (\$75.00)** shall be paid.
- B. For each petition for an appeal from the decision of the Administrative Official to the Board, a fee of One Hundred Sixty Dollars (\$160.00) shall be paid, the receipt of which shall accompany the petition.
- C. For each application for approval by the Planning Commission or Board of Zoning Appeals of a **Special Conditional Use Permit or Variance**, a fee of One Hundred ~~Fifty~~ **Sixty Dollars (\$160.00)** shall be paid, the receipt of which shall accompany the petition.
- D. For each application for a **Special Notice Permitted Use**, a fee of Forty Dollars (\$40) shall be paid.
- E. For each petition for an amendment to this ordinance, the fees shall be as follows:

Rezoning to:

Single and 2 Family	-	\$ 175.00
Multi-family Residential	-	\$ 250.00
Commercial	-	\$ 350.00
Industrial	-	\$ 350.00

- F. Except for the fee for a certificate of occupancy, no part of any filing fee paid pursuant to this Article shall be returnable to the applicant or petitioner.