

CITY OF SMYRNA

COMMUNITY DEVELOPMENT DEPARTMENT

MEMORANDUM

To: Mayor and Council

From: Russell Martin, AICP, Community Development Director
Caitlin Crowe, Planner I
Kelly Moon, Business License Officer

Date: February 3, 2021

CC: Planning and Zoning Board
Joe Bennett – Interim City Administrator

RE: Zoning Code Amendment – Home Occupation Updates

BACKGROUND

The Community Development Department reviewed Sections 402 and 505 of the City's Zoning Ordinance to bring the home occupation requirements inline with the current standards. In recent years, the radius letter requiring the neighbor signatures has become unnecessary and cumbersome to citizens looking to obtain a home occupation certificate.

ANALYSIS

While reviewing Sections 402 and 505 of the Zoning Ordinance, staff identified several subsections that need to be updated to reflect the current standards.

The definition of a home occupation is inconsistent with the requirements laid out in Section 505 which prohibit in-person interaction with the public within the homes. Staff is proposing to eliminate the sentences in the definition that allow emergency consultations and treatments in the home, as well as one chair beauty salons. These allowances are in direct conflict with the requirements stated in Section 505. In addition, it makes the ordinance unenforceable because code enforcement cannot prove if an interaction is an emergency or not. The recommendation is to remove the allowance from the code all together.

In recent years, home business applications in the City of Smyrna have been consistently internet related, solely performing their work via computer or phone; or administrative, where they have registered their home as their physical address, but the work itself is performed elsewhere. As of January 2019, 21% of home occupations are internet sales and 76% are considered administrative (including construction, catering, and mobile care wash). The original verbiage of the radius letter was intended to alert neighbors to a business in their neighborhood, which has become more and more obsolete in the modern internet age. By continuing to require the radius letter signatures, many citizens have stated an invasion of privacy and have questioned the rationale behind obtaining their neighbor's signatures.

However, the apartment radius letter should remain within the ordinance. A few apartment complexes within the city do not allow home businesses to operate in the complex while other apartments prefer to be informed of incoming home businesses to their complex. Either way, it is advantageous to keep the apartment radius letter requirement.

Currently, home business licenses are handled administratively through the Business License Officer, and do not go in front of Mayor and Council at any point due to 97% of the businesses being administrative or internet sales, whether new or a renewal. Thus, subsections 505.13 and 505.14 are outdated and inaccurate to current standards.

STAFF COMMENTS

Community Development has reviewed the City's Zoning Ordinance and has made several code amendments. The proposed amendments include:

- 1) Amend Section 402.30 to remove sentences that allow emergency consultation or treatment by physicians, dentists, lawyers and the operation of one-chair salons;
- 2) Removing subsection 505.12;
- 3) Removing references to appearing in front of mayor and council;
- 4) Updating language to reflect current standards; and
- 5) Updating the order and the language of the home occupation conditions.

Community Development recommends **approval** of the following code amendments to Section 505 of the City's Zoning Ordinance:

Subsections of Sections 402 and 505 of the Zoning Ordinance shall be amended to remove subsection 505.12 and update language. The proposed sections shall read as follows (amended portions are highlighted).

ARTICLE II. – DEFINITIONS

Sec. 402. – Defined words and terms.

(402.30) Home occupation: An occupation or activity customarily conducted entirely within a dwelling unit by the occupants thereof, which is clearly incidental and secondary to the use of the dwelling unit for residential purposes and is conducted in accordance with the applicable provisions of section 505. ~~Home occupation shall include the use of premises by a physician, surgeon, dentist, lawyer, clergyman, or other professional person for consultation or emergency treatment, but not for the general practice of his/[her] profession.~~ Home occupation shall also include the use of premises by salesmen, manufacturer's agents, insurance agents or representatives and contractors, when said salesmen, agents, representatives or contractors do not carry any inventory of goods or commodities for sale or warehousing upon the premises, other than samples which might be transported by hand and which are usually carried by such salesmen, agents, representatives or contractors into a prospect's office or place of business, also that the residence of said salesmen, agents, representatives or contractors is not used as a place where prospective clients would call in the normal course of business carried on by such salesmen, agents, representatives or contractors. ~~Also considered a home occupation under this ordinance is a one-chair beauty parlor, provided that no inventory of goods for sale shall be allowed upon the premises.~~

ARTICLE V. – GENERAL PROVISIONS

Sec. 505.- Home occupation.

Home occupations, as defined in subsection (402.30), may be established in a dwelling unit in any residential district subject to the following conditions and requirements:

(505.1) There shall be no exterior evidence of the home occupation.

(505.2) No accessory buildings or outside storage of materials and equipment shall be used in connection with the home occupation.

(505.3) No internal or external alterations inconsistent with the residential use of the building shall be permitted.

(505.4) No more than 25 percent of the total floor area of the dwelling unit shall be used for such home occupation.

(505.5) Only vehicles used primarily as passenger vehicles shall be permitted in connection with the conduct of the home occupation and no ~~on-street~~ parking of customer vehicles shall be permitted.

(505.6) No use shall involve general public contact on the property other than by telephone ~~or internet~~.

(505.7) No chemical, electrical or mechanical equipment shall be installed or used, except that which is normally used for household or hobby purposes.

(505.8) No equipment that interferes with radio and/or television reception shall be allowed.

(505.9) No commodity shall be stocked or sold on the premises.

(505.10) Such use shall be conducted entirely within the dwelling unit and only persons living in the dwelling unit shall be employed in such occupation.

(505.11) There shall be no group instruction, assembly or activity.

(505.12) ~~Reserved. All applicants requesting a home occupation certificate must provide notice to the parties specified herein. Such notice shall include a copy of the application and shall specify the date, time and place for the hearing on the application. The applicant must submit proof that the notice requirements of this subsection have been met. Such notice shall be provided as follows:~~

~~Applicants living in a multi-family dwelling must notify the owner of the dwelling and all occupants in the building sought to be used as a home occupation.~~

~~Applicants living in a single family dwelling in low density areas as designated by the comprehensive land use plan adopted by the City of Smyrna must notify all~~

~~homeowners within a 300-foot radius as measured in a straight line from the front door of the dwelling sought to be used as a home occupation.~~

~~Applicants in a single family dwelling in medium density areas as designated by the comprehensive land use plan adopted by the City of Smyrna must notify homeowners within a 200-foot radius as measured in a straight line from the front door of the dwelling sought to be used as a home occupation.~~

~~Applicants living in a single family dwelling in high density areas as designated by the comprehensive land use plan adopted by the City of Smyrna must notify homeowners within a 100-foot radius as measured in a straight line from the front door of the dwelling sought to be used as a home occupation.~~

~~The notice required under this section may be made either by certified mail, return receipt requested, addressed to the designated party or by personal service. Proof of service must be submitted with the application and must consist of either the signed return receipt, an Acknowledgment of Service signed by the intended recipient, or a Certificate of Service signed by the applicant certifying that service was made in accordance with this section.~~

(505.13) A home occupation certificate is merely a privilege to be granted only under circumstances meeting the requirements herein stated in section 505 and there is no vested right to such certificate. ~~Each applicant shall affirmatively show to the satisfaction of the mayor and council: Why such certificate should be granted; that the grant of such certificate will not impede or infringe enforcement of the zoning or other ordinances of the city; that the certificate will not be used for any illegal purpose; that a regular occupation tax certificate for the occupation sought could not otherwise be granted; that licensee has no other regular place of business or address; that licensee is of good character and has not been convicted of any crime involving moral turpitude; that denial of such certificate would create an undue hardship on the applicant and will not adversely affect the citizens or property values in the neighborhood; and that the owner of the property where the certificate is to be issued does not object or is a party to the application.~~

(505.14) Home occupation certificates shall be granted on a calendar year basis for one year, subject to renewal by the occupation tax certificate office, providing there has been no violation of the home occupation ordinances of any kind. ~~; subject to renewal by mayor and council at the first meeting in February of each calendar year, after review by the license committee. The license committee of mayor and council shall recommend to the full council such renewals as may be made without further application, such certificates as to which further information or reapplication should be required and such certificates which shall not be renewed. All new applications for home occupation certificates shall be considered only after payment to the city of an administrative investigation fee of an amount approved by the mayor and council and kept on file in the office of the city clerk.~~

(505.15) The following events shall be cause for revocation of a home occupation tax certificate, in the manner of other privileged certificates:

- (a) Conducting such activity as creates a nuisance or is illegal.

- (b) Violation of any law or ordinance (except for minor traffic offenses) of the city, county, State of Georgia or United States of America.
- (c) Making a false statement in connection with the application or any document or hearing in connection with such certificate.
- (d) Failure to pay the certificate fee or any tax or other fee to the city, Cobb County, or State of Georgia.

(505.16) The amount of the fee for a home occupation tax certificate shall be approved by the mayor and council and kept on file in the office of the city clerk.

(505.17) Upon conviction of any violation of any section or subsection of section 505 et seq., Home occupation, the violator shall be fined.

(505.18) Home occupation certificate may be issued from the occupation tax certificate office without requiring the applicant to appear before the mayor and council, restricted to the following classes: computer work, **internet sales**, typing, bookkeeping, small arts and crafts, and telephone use. Before the issuance of a home occupation certificate, the following conditions will have to be met by the applicant:

- (1) To operate a business from an apartment, the city will need a letter of approval from the owner, not the manager.
- ~~(2) To operate a business from the home, a letter of notification with the signatures affixed of all homeowners within a 300-foot radius of the subject property. If rental property, a letter of approval will also be required from the property owner allowing the business is required.~~
- ~~(3) Certification that there will not be any on-site retail sales of any kind at this location.~~
- (4) Certificate holder will be the only person to work from this location.
- (5) There shall **not** be **no any** inventory maintained on the premises.
- (6) Certification that there will **not** be **no any** outside storage of business related items of any kind **at this location**.
- (7) Certification that there will **not** be **no any** traffic generated by the business of any kind (e.g., vehicles or people).
- (8) Certification that there will **not** be **no any** signs or advertisement of any kind at this location.
- (9) Occupation tax certificate will be granted on a calendar year basis for one year only, subject to renewal by the occupation tax certificate office, providing there has **not** been **no any** violation of the home occupation ordinances of any kind.
- (10) Applicant agrees that any violation of the conditions stated above will render the certificate null and void.
- ~~(11) The amount of the fee for a home occupation tax certificate shall be approved by the mayor and council and kept on file in the office of the city clerk.~~
- ~~(12) No retail sales of any kind.~~

(Mo. of 11-1-76; Ord. of 7-15-85 (85-14), § 1; Ord. of 1-19-87 (87-1), § 1; Ord. of 1-19-87 (87-2); Ord. of 12-2-91 (91-44); Ord. No. 94-18, § 3, 12-5-94; Ord. No. 2004-6, 2-2-04)