



## Planning Commission Hearing Staff Report Hearing Date: August 22, 2018

**ITEM #3\*** The Community Development Department requests a Code Amendment to Chapter 14.41 of the Provo City Code to make various changes to the allowances and requirements of Home Occupations, including but not limited to the addition of certain definitions related to Home Occupations, limitations on promotional meetings, changes related to the number of customers and employees allowed with major home occupations, and the non-allowance for an accessory apartment and a major home occupation to be operated at the same time. City Wide impact. Brian Maxfield (801) 852-6429 PLOTA20180109

Applicant: Community Development Dept.

Staff Coordinator: Brian Maxfield

Property Owner: City Wide Application

Parcel ID#: n/a

Acreage: n/a

Number of Properties: n/a

Number of Lots: n/a

### **ALTERNATIVE ACTIONS**

1. **Continue** to a future date to obtain additional information or to further consider information presented. *The next available meeting date is September 12 at 5:00 P.M.*

2. **Deny** the requested variance. *This action would not be consistent with the recommendations of the Staff Report. The Board of Adjustment should state new findings.*

### **Relevant History:**

The Planning Commission recommended approval of a similar proposed amendment to this section at their meeting of July 11, 2018. However, after presentation to the Municipal Council, it was found the version recommended by the Planning Commission was not the same version as developed by the Council's committee. Although the differences could be considered minor, the Council has asked that the initial draft instead be considered.

### **Neighborhood Issues:**

None reported to date.

### **Summary of Key Issues:**

The need to regulate impacts of home occupations in order to maintain the character of residential neighborhoods?

### **Staff Recommendation:**

**Approve** the requested text amendment to Section 14.41 of the Zoning Ordinance and as attached in Exhibit A of this report.

*This action would be consistent with the recommendations of the Staff Report.*

## **OVERVIEW AND BACKGROUND**

*The Planning Commission recommended approval of a similar amendment to these sections at their meeting of July 11, 2018. However, during the presentation to the Municipal Council, it was found the version given to and recommended by the Planning Commission was not the same version as developed by the Council's advisory committee. Although the differences could be considered minor, the Council has asked that the initial draft instead be considered. The following is the same staff report as for the July 11, 2018 meeting, but with notes as to the differences in the previous and the current versions of the proposed amendment. The Council version is attached as Exhibit "A" and the July 11<sup>th</sup> version is attached as Exhibit "B."*

A number of recent Major Home Occupation requests have been controversial in their evaluation of possible impacts on their associated neighborhood. The Municipal Council has since discussed in a Work Meeting, the issues of those Home Occupation requests, especially in light of the Ordinance's stated intent that the "use should be conducted so that neighbors, under normal conditions, would not be aware of its existence." Following their discussion, the Council voted to further consider particular amendment recommendations and has now sent this request to the Planning Commission.

Home Occupations have existed in the City's Zoning Ordinance for more than 50 years. In general, the intent has been to allow business activities within a residence on a limited basis if such activities are secondary to the principal use (residence); comply with adopted standards; and conducted so that neighbors, under normal conditions, would not be aware of its existence.

At one time, all Home Occupations required a public hearing and approval by the Board of Adjustment. In 1993, revisions were made that separated Home Occupations into "Minor" and "Major" categories. Minor Home Occupations were those that could meet the listed conditions and could be approved by the Community Development Director. Major Home Occupations considered an allowance for additional impacts such as a little more intensive use and including a limited number of outside employees. Major Home Occupations do require a public hearing and Planning Commission approval in order to address those additional impacts and imposing conditions to mitigate their possible adverse effect on the neighborhood. However, by State Code, Conditional Use Permits must be approved unless the Board can find the anticipated impact(s) cannot be adequately mitigated through any means or conditions of approval.

This requested text amendment is intended to address and clarify a number of different items and involves such items as definitions of certain terms; limitations on promotional meetings; changes related to the number of customers and employees allowed with major home occupations; the hours in which customers and employees may be on the premises; and the non-allowance for an accessory apartment and a major home occupation to be operated at the same time.

### **DIFFERENCES BETWEEN EXHIBITS "A" AND "B."**

Two exhibits are attached to this staff report. The first (Exhibit "A") is the Council's Committee version and the one for consideration at this Planning Commission meeting. The second (Exhibit "B") is the draft created by the Community Development staff from using the Executive Summary. The drafts are very close in content, with some differences in wording and organization, and with the following general differences:

- Exhibit "A" allows six customers as does the existing ordinance, but restricts that number to two between the hours of 5:00 p.m. and 9:00 p.m. Exhibit "B" had restricted the number to only two customers for all hours.
- Exhibit "B" adds definitions for "Major Home Occupation" and "Minor Home Occupation."
- Exhibit "B" emphasizes new State Code provisions that Home Occupation Permits are not required for Minor Home Occupations.

### **FINDINGS OF FACT**

- One principal intent for Home Occupations is the use should be conducted so that neighbors, under normal conditions, would not be aware of its existence.
- Minor Home Occupations meeting the listed conditions of Chapter 14.41 are permitted within residential zones within the City.
- Major Home Occupations can be permitted by the Planning Commission, subject to meeting the requirements of Chapter 14.41 and any conditions imposed by the Board of Adjustment to mitigate potential impacts that may result from the extended uses listed in Chapter 14.41.

### **CONCLUSIONS**

The proposed amendments work to clarify and better regulate the allowance for Home Occupations in keeping with an intent to prevent or minimize non-residential impacts on the City's residential neighborhoods.

### **RECOMMENDATION**

**Approve** the requested text amendment to Section 14.41 of the Zoning Ordinance and as attached in Exhibit "A" of this report.

### **ATTACHMENTS**

- Exhibit "A" with the proposed text amendments.
- The Municipal Council's Home Occupation Amendments Executive Summary that provides the basis for the requested amendments.

## EXHIBIT "A"

### Chapter 14.41 Home Occupations.

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1 **14.41.015 Definitions.**

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3 "Customer" means any individual visiting the home occupation for a business related activity or  
4 purpose – including, but not limited to, clients, students, delivery personnel, and spectators.  
5 Each individual visiting the home occupation is a separate customer regardless of any  
6 relationship or corporate affiliation that may exist between them.

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8 "Employee" means any person who works for the home occupation business, regardless of  
9 whether they are paid or not.

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11 **14.41.040. Conditions.**

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13 Each and every one of the following conditions must be observed at all times by the holder of  
14 a Home Occupation Permit:

15 (1) Persons who are not bona fide residents of the premises shall not be employed on said  
16 premises.

17 (2) The home occupation shall be conducted wholly within the structure on the premises and  
18 shall not exceed forty-nine percent (49%) of the total floor area of said structures. The home  
19 occupation shall not occupy any area within the garage, unless the garage still functions for  
20 parking, and as long as two (2) parking spaces for residential use are still available.

21 (3) Promotional meetings for the purpose of selling merchandise or taking orders may exceed the  
22 limits on customers in this Section, but may not be held more than once per month and shall be  
23 limited to a maximum of 12 customers.

24 (4) The home occupation may include the sale of commodities. However, it is the intent that it be  
25 limited to items produced on the premises, or items that are incidental to the service provided,  
26 i.e., a beautician who also sells hair care products to her clientele. Retail sales of products and  
27 services are allowed at the home with a maximum of two (2) customers per hour- between the  
28 hours of 8:00 a.m. and 9:00 p.m., provided customers do not unreasonably disturb the peace and  
29 quiet of the neighborhood.

30 (5) No sign or advertising shall be displayed on the premises except name plates as permitted by  
31 Section 14.38.050(9), Provo City Code.

32 (6) No display of any kind shall be visible from the exterior of the premises.

- 33 (7) Garage, basement, yard or other similar sales shall not be allowed more than a total of five  
34 (5) days in any calendar year. Such sales do not constitute a home occupation.
- 35 (8) Only one (1) vehicle may be used in association with the home occupation and shall be  
36 garaged or stored entirely within a building or structure. The vehicle used for the home  
37 occupation shall be limited to a maximum gross vehicle weight rating of fourteen thousand  
38 (14,000) pounds. Nor shall a business be permitted that requires receipt or delivery of  
39 merchandise, goods, or equipment by other than a passenger motor vehicle or by parcel or letter  
40 carrier mail service using vehicles typically employed in residential deliveries. No deliveries by  
41 semi-tractor/trailer truck are permitted.
- 42 (9) There shall be complete conformity with the Provo City Code, fire, building, plumbing,  
43 electrical, and health codes and to all applicable state and city laws and ordinances.
- 44 (10) The home occupation shall not cause a demand for municipal or utility services or  
45 community facilities in excess of those usually and customarily provided for residential uses.
- 46 (11) The home occupation shall not alter the residential character of the premises or  
47 unreasonably disturb the peace and quiet, including radio and television reception, of the  
48 neighborhood by reason of color, design, materials, construction, lighting, sounds, noises, or  
49 vibrations.
- 50 (12) Any special condition established by the Community Development Department and made of  
51 record in the Home Occupation Permit, as they deem necessary to carry out the intent of this  
52 Section, shall be met.
- 53 (13) All Home Occupation Permits shall be valid for one (1) year, and may be renewed annually  
54 provided there have been no reported violations, complaints, or detrimental characteristics which  
55 may, in the opinion of the Community Development Department, require termination of  
56 said home occupation.
- 57 (14) Handicapped persons can obtain a waiver of one (1) or more of these conditions through the  
58 Zoning Administrator to allow such persons to become self-sufficient.
- 59 (15) In instances where the home also includes an accessory apartment, major home occupations  
60 are not allowed unless use of the accessory apartment is terminated.
- 61 (16) Sufficient off-street parking must be provided for all business related vehicles which park at  
62 the location of the home occupation, including those of the applicant, employee, customers,  
63 clients, and business-related visitor vehicles.

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65 **14.41.050. Minor Home Occupations.**

66 Home occupations which meet the above standards shall be defined as minor home occupations.  
67 In order to minimize traffic and off-street parking, and to avoid health and sanitation risks from  
68 the disposal of medical wastes, medical, dental, and other health professional offices are

**Comment [BJ1]:** The PC version does not include mention of parking for persons other than customers and employees.

69 specifically excluded as home occupations. Permitted minor home occupations include, but are  
70 not necessarily limited to the following:  
71 (1) artists, authors, architectural services, advertising;  
72 (2) barber and beauty shops;  
73 (3) consulting services, craft sales;  
74 (4) dance studio, aerobic exercise, music lessons, tutoring and general educational instruction,  
75 provided the number of students is limited to two (2) at a time;  
76 (5) direct sales distribution, desktop publishing;  
77 (6) data processing, computer programming, and service;  
78 (7) family day care (not more than six (6) children);  
79 (8) home crafts;  
80 (9) garden produce;  
81 (10) janitorial services;  
82 (11) insurance sales or broker, interior design;  
83 (12) mail order;  
84 (13) real estate sales, broker, or appraiser;  
85 (14) sales representative; and  
86 (15) contractors, provided there is no outside storage of equipment, and no more than one (1)  
87 company vehicle stored on site.

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89 **14.41.060. Major Home Occupations.**

90 "Major home occupation" means a home occupation which meets the standards listed in  
91 Section 14.41.040, Provo City Code, except as specifically modified by the  
92 Community Development Department as provided herein. Pursuant to approval of a conditional  
93 use permit, the Community Development Department may authorize an increase in the intensity  
94 of a home occupation, as follows:

95 (1) Up to six (6) customers per hour may come to a dwelling unit between the hours of 8:00 a.m.  
96 and 5:00 p.m. and up to two (2) customers per hour between the hours of 5:00 p.m. and 9:00 p.m.  
97 provided that customers do not unreasonably disturb the peace and quiet of the neighborhood.

98 (2) A larger commercial vehicle up to a gross vehicle weight rating of seventeen thousand five  
99 hundred (17,500) pounds may be used, provided it is parked on private property and adequately  
100 screened.

101 (3) Outside employees not residing on the premises may be allowed during daytime business  
102 hours (8:00 a.m. - 5:00 p.m.) subject to the conditions of either Subsection (a) or (b):

103 (a) No more than one (1) outside employees at one time for a dwelling unit located on  
104 a lot or parcel which is at least eight thousand (8,000) square feet in area. One (1)

**Comment [BJ2]:** This is the proposal that Dave Sewell noticed was missing in the last Council Meeting.

- 105 additional employee may be allowed for each additional increment of thirty thousand  
106 (30,000) square feet in the area of the lot or parcel.
- 107 (b) As an alternative to Subsection (a), a home occupation that does not bring customers to  
108 the premises may have up to two (2) outside employees at one time for a dwelling  
109 unit located on a lot or parcel which is at least eight thousand (8,000) square feet in size,  
110 provided sufficient off-street parking is provided. One (1) additional employee may be  
111 allowed for each additional increment of thirty thousand (30,000) square feet in the area of  
112 the lot or parcel.
- 113 (c) A home occupation that does not bring customers to the premises may have extended  
114 hours for outside employees, from 8:00 a.m – 9:00 p.m., subject to the conditions of  
115 Subsection (b).
- 116 (4) Promotional meetings for the purpose of selling merchandise, taking orders, or training may  
117 exceed the limits on customers and employees in this Section, but may not be held more than  
118 four (4) times per month and shall be limited to a combined total of 12 customers and employees.  
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## EXHIBIT “B”

### Chapter 14.41 Home Occupations.

- 14.41.010. Purpose and Intent.
- 14.41.020. Home Occupation Permit Required.
- 14.41.030. Procedure.
- 14.41.040. Conditions.
- 14.41.050. Minor Home Occupations.
- 14.41.060. Major Home Occupations.
- 14.41.070. Noncompliance.
- 14.41.080. Appeal.
- 14.41.090. Business License Required.

#### 14.41.010. Purpose and Intent.

To encourage the majority of business activities to be conducted in appropriate commercial zones. Business activities may be conducted within a residence on a limited basis if such activities comply with standards of this Section. All home occupations shall be secondary and incidental to the residential use. The use should be conducted so that neighbors, under normal conditions, would not be aware of its existence. Home occupations are a temporary privilege which can be revoked if disruption of the residential neighborhood occurs.

#### 14.41.015. Definitions.

For the purposes of this Chapter, the following definitions shall apply

“Customer” means an individual or a single representative of a group or organization, who buys goods or services directly at the premises of a home occupation.

“Employee” means an individual who is either paid or volunteers for work performed in association with a home occupation business.

“Major Home Occupation” means a home occupation that may exceed specific impacts found with a minor home occupation, but where such impacts can be adequately mitigated through adherence to specific conditions included with an approved Conditional Use Permit.

“Minor Home Occupation” means a home occupation where the combined off-site impact of the home-based business and the primary residential use of the property, does not materially exceed the off-site impact of the primary use alone.

#### 14.41.020. Home Occupation Permit ~~Required.~~

To assure compliance with provisions of this Title and to protect the character of residential neighborhoods in the City of Provo, a Home Occupation Permit ~~shall be obtained from the Community Development Department before a dwelling unit in a residential zone may be used for business purposes.~~ is required as follows:

(1) A Home Occupation Permit is not required for those home occupations that fully comply with the conditions listed in Section 14.41.040. Provo City Code; qualify as a minor home occupation, or are else otherwise exempted by State Code.

(2) An annual Home Occupation Permit is required for all Major Home Occupations.

#### 14.41.030. Procedure.

The Community Development Department may, upon application, issue a Home Occupation Permit which shall state the home occupation permitted, the conditions attached thereto, and any time limitations imposed thereon. The

53 permit shall not be issued unless the Community Development Department is satisfied that the applicant will meet  
54 all of the conditions listed below and that the applicant has agreed in writing to comply with all said conditions.  
55 (Ren 1993-02, Am 2016-08)

56  
57 **14.41.040. Conditions.**

58 Each and every one of the following conditions must be observed at all times by the holder of a Home Occupation  
59 Permit:

60  
61 (1) Persons who are not bona fide residents of the premises shall not be employed on said premises.

62  
63 (2) The home occupation shall be conducted wholly within the structure on the premises and shall not exceed  
64 forty-nine percent (49%) of the total floor area of said structures. The home occupation shall not occupy any area  
65 within the garage, unless the garage still functions for parking, and as long as two (2) parking spaces for residential  
66 use are still available.

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68 (3) Promotional meetings for the purpose of selling merchandise, taking orders, or training shall not include more  
69 than 12 attendees at any one meeting, nor be held more than once per month.

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71 (4) The home occupation may include the sale of commodities. However, it is the intent that it be limited to items  
72 produced on the premises, or items that are incidental to the service provided, i.e., a beautician who also sells hair  
73 care products to her clientele. Retail sales of products and services are allowed at the home with a maximum of two  
74 (2) customers per hour, and only between the hours of 8:00 a.m. and 9:00 p.m. Sufficient parking area shall be  
75 maintained on-site for customer parking.

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77 (5) No sign or advertising shall be displayed on the premises except name plates as permitted by Section  
78 14.38.050(9), Provo City Code.

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80 (6) No display of any kind shall be visible from the exterior of the premises.

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82 (7) Garage, basement, yard or other similar sales shall not be allowed more than a total of five (5) days in any  
83 calendar year. Such sales do not constitute a home occupation.

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85 (8) Only one (1) vehicle may be used in association with the home occupation and shall be garaged or stored  
86 entirely within a building or structure. The vehicle used for the home occupation shall be limited to a maximum  
87 gross vehicle weight rating of fourteen thousand (14,000) pounds. Nor shall a business be permitted that requires  
88 receipt or delivery of merchandise, goods, or equipment by other than a passenger motor vehicle or by parcel or  
89 letter carrier mail service using vehicles typically employed in residential deliveries. No deliveries by semi-  
90 tractor/trailer truck are permitted.

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92 (9) There shall be complete conformity with the Provo City Code, fire, building, plumbing, electrical, and health  
93 codes and to all applicable state and city laws and ordinances.

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95 (10) The home occupation shall not cause a demand for municipal or utility services or community facilities in  
96 excess of those usually and customarily provided for residential uses.

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98 (11) The home occupation shall not alter the residential character of the premises or unreasonably disturb the  
99 peace and quiet, including radio and television reception, of the neighborhood by reason of color, design, materials,  
100 construction, lighting, sounds, noises, or vibrations.

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102 (12) Any special condition established by the Community Development Department and made of record in the  
103 Home Occupation Permit, as they deem necessary to carry out the intent of this Section, shall be met.  
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105 (13) All Home Occupation Permits shall be valid for one (1) year, and may be renewed annually provided there  
106 have been no reported violations, complaints, or detrimental characteristics which may, in the opinion of the  
107 Community Development Department, require termination of said home occupation.  
108

109 (14) Handicapped persons can obtain a waiver of one (1) or more of these conditions through the Zoning  
110 Administrator to allow such persons to become self-sufficient.  
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112 **14.41.050. Minor Home Occupations.**

113 Home occupations which meet the above standards shall be defined as minor home occupations. In order to  
114 minimize traffic and off-street parking, and to avoid health and sanitation risks from the disposal of medical wastes,  
115 medical, dental, and other health professional offices are specifically excluded as home occupations. Permitted  
116 minor home occupations include, but are not necessarily limited to the following:  
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- 118 (1) artists, authors, architectural services, advertising;
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- 120 (2) barber and beauty shops;
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- 122 (3) consulting services, craft sales;
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- 124 (4) dance studio, aerobic exercise, music lessons, tutoring and general educational instruction, provided the  
125 number of students is limited to two (2) at a time;
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- 127 (5) direct sales distribution, desktop publishing;
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- 129 (6) data processing, computer programming, and service;
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- 131 (7) family day care (not more than six (6) children);
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- 133 (8) home crafts;
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- 135 (9) garden produce;
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- 137 (10) janitorial services;
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- 139 (11) insurance sales or broker, interior design;
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- 141 (12) mail order;
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- 143 (13) real estate sales, broker, or appraiser;
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- 145 (14) sales representative; and
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- 147 (15) contractors, provided there is no outside storage of equipment, and no more than one (1) company vehicle  
148 stored on site.  
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150  
151 **14.41.060. Major Home Occupations.**

152 ~~"Major home occupation" means a home occupation which meets the standards listed in Section 14.41.040, Provo~~  
153 ~~City Code, except as specifically modified by the Community Development Department as provided herein. All~~  
154 ~~Major Home Occupations shall require the issuance of a Conditional Use Permit as regulated by Section 14.02.040.~~  
155 Pursuant to approval of a conditional use permit, the Community Development Department may authorize an  
156 increase in the intensity of a home occupation, as follows:  
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158 (1) ~~The number of customers coming to a dwelling unit may range up to six (6) per hour provided sufficient off-~~  
159 ~~street parking is provided. No more than one (1) major home occupation may be in operation at the same location,~~  
160 ~~and no accessory apartment may be operated concurrently with a major home occupation at the same location.~~

162 (2) A larger commercial vehicle up to a gross vehicle weight rating of seventeen thousand five hundred (17,500)  
163 pounds may be used, provided it is parked ~~on private property~~ on-site and adequately screened from street view.

164 (3) Outside employees not residing on the premises may be allowed ~~during daytime business the hours (8:00 a.m.—5:00 p.m.)~~  
165 subject to the following conditions of ~~either Subsection (a) or (b):~~

166 (a) ~~No more than One (1) outside employees at one time for a dwelling unit located on a lot or parcel which is at least~~  
167 ~~eight thousand (8,000) square feet in area. One (1) additional employee A maximum of two (2) employees at any one time may~~  
168 ~~be allowed for each additional increment of thirty thousand (30,000) square feet in the area of the lot or parcel. properties of~~  
169 ~~38,000 square feet or greater.~~

170 (b) ~~As an alternative to Subsection (a), a home occupation that does not bring customers to the premises may have up to~~  
171 ~~three (3) outside employees at one time for a dwelling unit located on a lot or parcel which is at least eight thousand (8,000)~~  
172 ~~square feet in size, provided sufficient off street parking is provided. One (1) additional employee may be allowed for each~~  
173 ~~additional increment of thirty thousand (30,000) square feet in the area of the lot or parcel. Outside employees may only be~~  
174 ~~allowed on the premises between the hours of 8:00 a.m. and 5:00 p.m., except when the home occupation does not bring~~  
175 ~~customers to the premises, employee hours may be extended to 9:00 p.m.~~

176 (c) Sufficient off-street parking shall be provided and maintained on the premises for employee parking.

177 (4) Promotional meetings for the purpose of selling merchandise, taking orders, or training may be held up to four  
178 (4) times per month, but shall not include more than 12 attendees at any one meeting.

179 (5) ~~An applicant for a Major Home Occupation may forego the fee for a conditional use permit if all the property~~  
180 ~~owners within three hundred (300) feet of the applicant's property sign a petition in support of the home occupation.~~

#### 181 **14.41.070. Noncompliance.**

182 Any Home Occupation Permit shall be revoked by the Community Development Department upon violation of any  
183 requirements of this Chapter, or upon failure to comply with any of the conditions or limitations of the permit,  
184 unless such violation is corrected within three (3) days of receipt of written notice thereof. A permit may be revoked  
185 for repeated violations of the requirements of this Chapter, notwithstanding compliance to the violation notice. (Ren  
186 1993-02, Am 2016-08)

#### 187 **14.41.080. Appeal.**

188 In the event of denial of any permit, or of the revocation thereof or of objection to the limitations placed thereon,  
189 appeal may be made to the Board of Adjustment in accordance with the provisions of Section 14.05.050, Provo City  
190 Code. (Ren 1993-02)

#### 191 **14.41.090. Business License Required.**

192 A Home Occupation Permit is not a business license, and the granting of said permit shall not relieve the permittee  
193 of any other license requirement of the City or of any other public agency.

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END