

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR JOSEPHINE COUNTY
STATE OF OREGON**

ORDINANCE NO. 2012-003

**AN ORDINANCE AMENDING THE TEXT OF THE JOSEPHINE COUNTY RURAL LAND
DEVELOPMENT CODE (ORDINANCE 94-4) REGARDING HOME OCCUPATIONS AND
RESIDENTIAL USE IN COMMERCIAL ZONES**

WHEREAS, the Board of County Commissioners directed the Planning Director to request an amendment to the Rural Land Development Code (RLDC) to provide specific standards and procedures for review and development of Home Occupations and Residential Use of properties in commercial zones; and

WHEREAS, the Planning Commission formed a Home Occupation sub-committee to review existing provisions of the RLDC and draft proposed amendments; and

WHEREAS, the Planning Commission, pursuant to the review authority granted in Section 46.020 of the RLDC, conducted a public hearing on June 11, 2012 regarding the proposed text amendments after required notice by publication, community advertisement, and mailing to interested persons, agencies and organizations; and

WHEREAS, after due consideration of the proposed ordinance and the testimony and evidence from those participating at the hearing, the Planning Commission proposed several specific text changes to the language of the Rural Land Development Code and voted 4-3 to approve the amendments; and

WHEREAS, written findings of approval were approved and signed by the Rural Planning Commission Chair and entered into the official record of the proceedings kept by the Planning Director; and

WHEREAS, notice of the Planning Commission's decision was given as required by law, and the decision having now become final without appeal; and

WHEREAS, this Board, having reviewed the record of the foregoing matters, find the approved ordinance advances the policies and purposes of the Josephine County Comprehensive Plan; and

NOW, THEREFORE, based upon all of the foregoing recitals, the Board does hereby adopt amendments to the text of the Josephine County Rural Land Development Code Articles 92, 11, 62.020, 101.220, 61, 64, 65, 67 and 68 as depicted in the attached *Exhibit A*.

Section 2. Affirmation

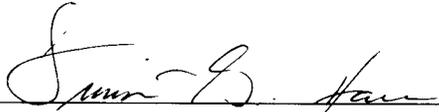
Except as specifically amended by the provisions of this Ordinance, the Comprehensive Plan (Ordinance 81-11) is hereby affirmed in all other respects.

Section 3. Effective Date:

First reading by the Board of County Commissioners this 22nd day of August 2012.

Second reading and adoption by the Board of County Commissioners at least thirteen (13) days from the first reading this 12th day of September 2012. This Ordinance shall take effect ninety (90) days after its adoption by the Board of County Commissioners.

JOSEPHINE COUNTY BOARD OF COUNTY COMMISSIONERS:



Simon Hare, Chair



Don Reedy, Vice-Chair

Absent at Signing

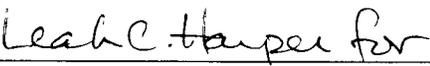
Harold Haugen, Commissioner

ATTEST:



Recording Secretary

APPROVED AS TO FORM:



Steven E. Rich, Legal Counsel

EXHIBIT A

Article 92 - HOME OCCUPATIONS

Ordinance 2012-003, Effective December 11, 2012

92.010 Purpose

It is the purpose of this Article to encourage citizens of the County to use their homes to engage in small-scale business ventures. Home Occupations are regulated to ensure that they do not alter the residential character of the neighborhood, nor infringe upon the rights of nearby residents to the peaceful enjoyment of their neighborhood nor be subjected to negative effects on property values by business activities on nearby parcels. A Home Occupation permit does not 'run with the land' and may not be assumed by a new owner or resident.

92.020 Authority

The provisions of this Code are intended to apply to residential and resource-zoned properties already occupied with a residential use. No person shall carry on a home occupation, or permit such use to occur on property, which that person owns or is in lawful control, contrary to the provisions of this Article. Home Occupations in resource zones are also subject to ORS 215.448.

92.030 General Definition and Criteria for Home Occupations

- A. Home Occupation means a business in conjunction with a residential use which results in financial remuneration from a product or service and is conducted by at least one (1) resident occupying the dwelling on the subject property. Home occupations are clearly incidental and accessory to the residential use. All Home Occupations shall be conducted in accordance with the following general criteria:
1. All business operations shall comply with the current noise ordinance and shall not produce offensive vibration, smoke, dust, odors, heat, glare or electrical interference detectable to normal sensory perception at the property line.
 2. No construction of any structure that would not otherwise be allowed in the zone in which the Home Occupation is located may be established. (ORS 215.448(3)).
 3. No storage and/or distribution of toxic or flammable materials and spray painting/finishing operations that involve toxic or flammable materials, which in the judgment of the Fire Marshal and/or the Department of Environmental Quality (DEQ) pose a dangerous risk to the residence, its occupants, and/or surrounding properties are allowed. Those individuals who are engaged in home occupations shall submit to the Planning Office the DEQ Potential Site Hazards Checklist which pertains to all potentially toxic and/or flammable materials associated with the use.
 4. All parking and signage related to the Home Occupation shall be on-site, not in public right-of-way.
 5. Home Occupations shall be secondary to the residential use of the property.

6. All Home Occupations other than those deemed as exempt shall be administered as Type I, II or III, distinguished by the potential impacts they represent to nearby properties.
7. Type I, II and III Home Occupations require issuance of a Development Permit as final authorization.
8. Only the principal resident(s) of a residential property may undertake home occupations with non-resident employees as allowed by the Type of Home Occupation.
9. In the event the requirements of this Article conflict with other requirements contained in this code, the requirements of this Article shall govern.

92.040 Exempt Home Occupations

- A. Exempt Home Occupations are not subject to the permit process, and are defined by the following standards:
 1. Only the resident(s) of the property may undertake Exempt Home Occupations.
 2. No exterior signs that identify the property as a business location.
 3. No customers shall come to the property.
 4. Deliveries to the residence must be by postal package services only.
 5. One (1) business vehicle is allowed on-site.
 6. Storage of material related to the business is confined to the interior of the residence or accessory structure with no exterior indication of a business.
 7. The business shall not occupy more than 25% of the total combined square footage of structures on the property.
 8. The address of the home shall not be given in any advertisement, including but not limited to commercial telephone directories, newspapers, magazines, off-premises signs, flyers, radio, television, websites or other advertising media.
- B. No Development Permit will be required for Exempt Home Occupations, except that new structures or additions on-site are subject to Article 41.020.

92.050 Type I Home Occupations

- A. Type I Home Occupations require application review prior to issuance of a permit and are to be conducted in conformance with the following additional standards:
 1. Up to two (2) non-resident on-site employees or volunteers (including part-time employees).

2. Adequate on-site parking to accommodate residents, employees, business vehicles and customers.
3. One (1) non-illuminated exterior sign, not to exceed 6 square feet in size and setback 10 feet from property lines.
4. Customers and clients by appointment only.
5. Deliveries to the residence by postal package services only.
6. Two (2) business vehicles permitted on-site.
7. No outdoor storage or activities.
8. No large construction equipment or commercial vehicles (e.g. earth movers, dump truck, box truck, semi-truck, equipment trailers) in conjunction with the business to be on-site.
9. No major remodel or addition of equipment or appliances that would not be typical of the residential use is allowed (e.g. commercial kitchen, industrial drying oven, production machinery).
10. Operations shall be conducted weekdays during typical business hours.
11. Shall have adequate access for proposed business purposes.

B. Permit Procedures for Type I Home Occupations

1. An application for a Type I Home Occupation Permit shall be filed according to the application procedures of Article 22 for a ministerial permit.
2. The application shall identify the type of use and address the conditions contained in this Article and other applicable sections of this Code.
3. A Development Permit shall be issued as final authorization of an approved Type I Home Occupation.

92.060 Type II Home Occupations

- A. Type II Home Occupations require application review prior to issuance of a permit and shall be conducted in conformance with the following additional standards:
1. Up to four (4) non-resident on-site employees or volunteers (including part-time employees).
 2. Adequate on-site parking to accommodate residents, employees, business vehicles and customers.

3. One (1) exterior sign, not to exceed 12 square feet in size and setback 10 feet from property lines.
4. 'Drop in' customers and clients are allowed, including small groups of customers or classes.
5. Any commercial pick-up and deliveries other than postal/package services are limited to two (2) per day.
6. Up to four (4) business vehicles permitted on property.
7. Incidental retail sales associated with the permitted home occupation are allowed.
8. Storage of materials on-site to be screened from view of neighboring properties by a solid fence, adequate vegetation, or other structures.
9. Outdoor activities on-site to be screened from view of neighboring properties by a solid fence, adequate vegetation or other structures and setbacks may be employed to mitigate potential impacts to adjacent properties.
10. Large equipment and commercial vehicles only if screened from view of neighboring properties or garaged.
11. Hours of operation as allowed by conditions of approval.
12. Type II Home Occupations are subject to the Site Plan Review standards of Section 42.050.A.
13. Vehicle or boat-oriented businesses, including repair, service, detailing, restoration and sales may have up to four (4) vehicles on-site to be worked on or for sale. Inside storage or screening required.

B. Permit Procedures for Type II Home Occupations

1. Type II Home Occupations require Site Plan Review per Article 42, filed according to the application procedures of Article 22.040 for a quasi-judicial permit.
2. The application shall identify the type of use and address the conditions contained in this Article and other applicable sections of this Code.
3. Review will require public notice as required by Article 32.
4. The Planning Office will conduct a site visit as a part of the review.
5. The Planning Director may apply conditions to the approval of Type II Home Occupation permits to ensure compliance with the requirements of this Article.
6. A Development Permit shall be issued as final authorization of an approved Type II Home Occupation.

92.070 Type III Home Occupations

- A. Any proposed Home Occupation exceeding the standards of Type I or II Home Occupations shall either be reviewed as a Conditional Use Permit, subject to Article 45; or, must be conducted as a use in commercial or industrial zones, to include the following:
 - 1. Retail Sales.
 - 2. Large scale manufacturing.
 - 3. Business operations requiring hazardous materials.
 - 4. Vehicle or boat-oriented businesses, including repair, service, detailing, restoration and sales for more than four (4) vehicles on-site at a time.
 - 5. Bed & Breakfast Inns subject to special standards contained in Section 92.110.
- B. Uses listed in Section 92.080.A may not be reviewed as a Type III Home Occupation.
- C. Type III Home Occupations shall be conducted in conformance with the standards of Section 92.030.
- D. A Development Permit shall be issued as final authorization of an approved Type III Home Occupation.

92.080 Prohibited Uses

- A. Because of the potential adverse impacts they pose to residential neighborhoods, the following uses are not allowed as Home Occupations and must be established in commercial or industrial zones:
 - 1. Junk and salvage operations.
 - 2. Storage and/or sale of fireworks.
 - 3. Mobile home sales.
 - 4. Vehicle wreckers and/or recyclers.

92.090 Similar Permitted and Outright Uses

- A. Agriculture, farming and farm use, as these uses are defined in Section 11.030 of this Code are outright uses in farm and forest zones and are permitted uses with criteria in residential zones (Section 61.050). Farm stands require standards only review in farm zones (Section 64.035.F) and are permitted uses in residential zones. Forest product propagation or harvesting is an outright use in farm and forest zones and a permitted use in residential zones.
- B. Short-term sales from a residence shall not be deemed to fall under the regulations for home

occupations and are allowed outright. Such sales shall not exceed four (4) days in duration and occur more than ten (10) times in any given calendar year. Examples of such uses are typically known as: yard or garage sales, estate sales, auctions, beverage stands, rummage and craft sales.

92.100 Revocation of Home Occupation Permits

A. Grounds for Revocation

If a Home Occupation fails to maintain the standards of this code or the permit issued by the County, the Planning Director may revoke a Home Occupation permit according to the revocation procedures outlined in Article 41, or require re-application to a higher Type.

92.110 Special Standards for the Operation of Bed & Breakfast Inns

A. A bed and breakfast inn operating from a residentially developed property will be reviewed as a Type III Home Occupation and shall be operated according to the following special standards:

1. The inn must be located in a residence or accessory living quarters.
2. The operator of the inn must live on the premises and continue to use part of the main dwelling as a residence.
3. Outward modification of the structure shall be made only if such changes are compatible with the character of the neighborhood and the intent of the zone, and in all cases, the changes shall maintain the residential character of the structure.
4. The inn shall be limited to a maximum of ten (10) individual guests and five (5) bedrooms.
5. The inn shall be compatible with the neighborhood in terms of access and the proximity to structures and the operation shall be screened from view from adjoining lots or parcels.
6. One (1) on-premise sign not to exceed 12 square feet and setback 10 feet from property lines.
7. Exterior illumination of the sign shall be limited so that the illumination will not adversely impact the residential character of the area.
8. One (1) on-site parking space for each sleeping room shall be provided in addition to the two (2) on-site parking spaces required for the dwelling.
9. The inn shall meet all applicable county and state water, sewage, and licensing requirements. The applicant shall submit evidence from the appropriate agency that the applicant has contacted them and meets, or can comply with agency requirements.

Article 11-Definitions

HOME OCCUPATION. A commercial activity taking place in conjunction with a residential use which results in financial remuneration from a product or service and is conducted by at least one (1) resident occupying the dwelling on the subject property. Home occupations are clearly incidental and accessory to the residential use, and do not alter the residential character of the neighborhood. A Home Occupation permit does not ‘run with the land’ and may not be assumed by a new owner.

ACCESSORY LIVING QUARTERS. Habitable structures accessory to a dwelling, without kitchen. Not to be used as an independent or rental dwelling; occupants are dependent upon the main dwelling for kitchen use. No more than two (2) per parcel, 600 square foot maximum each, unless approved as a Bed & Breakfast Inn. Not to be attached to any other accessory structure. Held to accessory structure square footage maximums of Article 72. Allowed in conjunction with a legal residence.

COMMERCIAL VEHICLE. A commercial motor vehicle defined by the Oregon Vehicle Code as a vehicle that will operate at a gross vehicle weight rating or combination weight of 26,001 pounds or more; also, vehicles designed to transport 16 or more persons and vehicles designed to transport hazardous materials regardless of weight. Commercial vehicles do not include: fire trucks, emergency vehicles, motor homes and recreational vehicles operated solely for personal use.

BUSINESS VEHICLE. A vehicle used in the course of doing business for transport of persons, goods, equipment.

INCIDENTAL RETAIL SALES. Retail sales that are ancillary and secondary to the home business, such as selling shampoo from a home hair salon.

Residential Occupancy of Commercial Properties

Section 62.020.E:

E. Commercial – Care Providers and Dwellings

1. Family day care dwelling for fewer than 13 children, including children of the care provider, regardless of full-time or part-time status.
2. Manufactured dwelling only shall be allowed when in conjunction with a business located on the same parcel and when occupied by the owner/operator of the business. All services and requirements for both the dwelling and the business shall be located on the same lot. A waiver of remonstrance shall be recorded with the deed which recognizes the right of commercial operations to exist and that the normal conduct of business shall not be considered a nuisance.
3. Residential care home or residential care facilities.
4. Single-family and/or manufactured dwelling only when lawfully existing (alteration or replacement only; subject to the time limits contained in Section 13.030 of this Code).
5. Residential occupancy of the business, providing such dwelling is on the same property, and meets the residential occupancy requirements of the Building Code.

Section 101.220.D:

D. Care Providers and Dwellings:

1. One (1) residential care home or one residential care facility.
2. One (1) manufactured dwelling may be allowed only when located on the same lot or parcel (to include water and septic services) as the commercial use, and when occupied by the owner/operator of the commercial use. As a condition of this use, a deed restriction shall be executed by the owner and recorded in the county deed records to disclose the qualified nature of the dwelling, and which waives complaint or claim of any kind for impacts from authorized commercial activities on nearby commercially zoned lands.
3. Lawfully existing single-family and/or manufactured dwellings (alteration or replacement only, subject to the time limits contained in Section 13.030 of this Code).
4. Residential occupancy of the business, providing such dwelling is on the same property, and meets the residential occupancy requirements of the Building Code.

Article 61 – Rural Residential Zones

Section 61.020 - Permitted Uses

K. Type I and Type II Home Occupations, subject to Article 92.

Section 61.030 - Conditional Uses

H. Type III Home Occupations, subject to Article 92.

Article 64 – Exclusive Farm & Farm Resource Zones

Section 64.030 - Permitted Uses

H. Type I and Type II Home Occupations, subject to Article 92.

Section 64.040 - Conditional Uses

P. Type III Home Occupations, subject to Article 92.

Article 65 – Forest Commercial & Woodlot Resource Zones

Section 65.025 - Permitted Uses

C. Type I and Type II Home Occupations, subject to Article 92.

Section 65.030 - Conditional Uses

O. Type III Home Occupations, as defined in ORS 215.448, and subject to Article 92.

Article 67 – Serpentine Zone

Section 67.020 - Permitted Uses

S. Type I and Type II Home Occupations, subject to Article 92.

Section 67.030 - Conditional Uses

C. Type III Home Occupations, subject to Article 92.

Article 68 – Limited Development Zone

Section 68.020 - Permitted Uses

O. Type I and Type II Home Occupations, subject to Article 92.

Section 68.030 - Conditional Uses

D. Type III Home Occupations, subject to Article 92.