

TO: Mayor and Members of City Council

THRU: Telly C. Whitfield, Ph.D. - Assistant City Manager
Dr. Gerald Newton, AICP - Development Services Director
David Steinmetz, CFM - Development Services Assistant Director

FROM: James Rutherford - Housing & Code Enforcement Division Manager

DATE: March 7, 2022

RE:
Home Occupations – City Code Review and Comparison to Peer Cities

COUNCIL DISTRICT(S):
All

Relationship To Strategic Plan:

2022-2026 Strategic Plan

Goal 2 – Responsive City Government Supporting a Diverse and Viable Economy

Objectives 2.1 – To ensure a diverse City tax base

Objective 2.3 - To leverage partnerships for job creation and retention, with a focus on the local and regional workforce to increase per capita income.

Objective 2.4- To sustain a favorable development climate to encourage business growth

Goal 3 - City Investment in Today and Tomorrow

Objective 3.4 – To revitalize neighborhoods with effective code enforcement and violation abatement.

Executive Summary:

City Council directed staff to conduct a review of the city code as it relates to the operation of businesses in residential developments. This has been done by looking at ten peer cities. The implied request was to determine if additional measures should be considered to regulate home occupations, and specifically not allowing gyms and personal training in residential neighborhoods.

The conclusions of peer cities is that we are aligned with all others in how we handle the specific item, have significant constraints in place that work in other communities, and the balance of great neighborhoods with encouraged home-occupations continues to be the goal of all communities (especially as a result of COVID impacts on job locations). The Council request was to research, not recommend, this issue. Any policy changes are citywide.

Commercial activities are conducted as an accessory use to the dwelling and they are listed in the use table as a Home Occupation. A review of the Fayetteville Code of Ordinances in comparison to ten North Carolina peer cities was conducted. Conclusions and options were generated from the review. Thirty variables were

examined. Fayetteville's standards for residential home occupations align with the majority of the ten peer North Carolina cities.

The research was compiled and first set to be reviewed at the November 1, 2021 City Council work session. The item was delayed by the City Council to a future date due to meeting time constraints. The item was pushed back until the March 7, 2022 City Council work session. At the request of Councilman Dawkins, a meeting was held on December 21, 2021 with Staff to look at the November CCAM, and cover areas of interest and concerns regarding home occupations specific to complaints received from citizens. This report covers the material of November's CCAM while noting points raised from the December 21, 2021 meeting.

Background:

At the September 7, 2021 City Council Work Session, City Council directed the staff to research and bring back findings to the City Council as an Administrative Report. The item was placed on the agenda for the November 1, 2021 City Council work session. City Council postponed the item to December 2021. This meets that directive and is designed for presentation, if requested.

The genesis of the issue came as conflicts arose over an allowable home occupation with some neighbors upset about impacts on the neighborhood with others using and wanting to support their neighbor. Fayetteville actively supports job creation, increasing per capita income, while balancing a favorable development climate to encourage business growth with ensuring people have great places to live. There are times these key items conflict. The Attorney's office, Manager's office, and Development Services met and determined that all standards of the current ordinance requirements were being met on this specific property. However, meeting the standards still created concerns over safety, noise, use of the public right-of-way, traffic, and hours of operation.

Because the specific case comes under the standards for many types of businesses or activities happening in non-business zoned areas, any change to one specific activity affects thousands of similarly allowable home occupations. The following outlines the specific "gyms in residential neighborhoods" and the larger request to research other NC city ordinances. Background of our existing regulations and existing standards for Home Occupations (working from home) are also provided.

Specific item of "gyms in residential neighborhoods."

Fayetteville is the home to thousands of home gyms and commercial gyms. Most home work outs are a combination of using the sidewalks, streets, parks for walking, jogging, biking, rucking; and, using all types of gym equipment in and on one's personal land and home. These activities are healthy practices for those involved and in creating positive, healthy neighborhoods. Doing any of these activities, any time of the day or night is evident everywhere and a mark of a vibrant community fabric. Neighbors spend time together, friends gather, and activities affecting others is expected.

However, if the activity becomes unruly, overly noisy, or otherwise generally offensive, North Carolina permits cities to use police powers "to govern men and things within the limits of its domain." Depending on perspectives, the same activity that neighbors and participants view as positive others view as negatives. Home gyms (and various games played on streets- like basketball, a typical home fitness activity) with noise and who

comes over occasionally is one of these balancing acts of when is it too much. When the activity is not for financial gain (a business) ordinances for noise and neighbor disputes are handled by the police as needed, if not by the neighbors themselves.

When the use of equipment and clients pay to use equipment or go to a house for professional services, the activities are then measured to what the use is and what services are paid for by clients. In the case of “gyms in residential neighborhoods,” a combination of reviews are made to determine if any defined nuisances or ordinances designed to promote the general safety and welfare of those in the city are happening. This is done by looking at allowable home occupations and then the standards that apply to all those uses.

Home personal trainers and home gyms are an increasingly popular business. Generally, the forced “work-from-home COVID impact” accelerated the desire and need for families and working adults to come up with ways to pay the bills. This is just one of countless ways people continue to find ways to make money outside of conventional jobs. It is not anything new, which is why communities in the United States have regulated home occupations under the general police powers afforded them.

How Fayetteville regulated Home Occupations.

Fayetteville has had some version of regulations in place for business operations in neighborhoods since 1961. The idea of encouraging a careful mix continues as the types of businesses that existed then to now could not have been imagined. The premise still holds from that of 60 years ago- encourage, protect, and create the proper blend.

Prior to the adoption of the Unified Development Ordinance in 2011, the Fayetteville City Code permitted Incidental Home Occupations in residential zoning districts with restrictions. One of the restrictions required that except for professional offices (doctors, lawyers, dentist, architects, and engineers) there could not be any contact with the public at the home. In-home childcare providers and hair cutting were also permitted with limitations. The ordinance did not allow staff that did not live in the home to come to the home business.

-Incidental home occupation requirements/standards prior to adoption of UDO

1. There can be no storage of products or items used with this business.
2. Only one commercial vehicle, not more than 5000 pounds can be used in connection with this home occupation.
3. No more than 15% of the total floor area of your home can be used for this office.
4. The property cannot be used as a staging area for employees to assemble.
5. There can be no contact with the general public.
6. A sign is permitted, 2 square feet or less on the residence.

-Current

When the UDO was adopted, the guidance was to push self-employed citizens to be able to work from home in an effort to “go green”. The thought was that working from

home would reduce traffic congestion and save gasoline by doing away with a commute. The current ordinance allows for one employee to work at the home business that does not reside in the home. The current ordinance also requires off street parking that is sufficient in number for the patrons of the home business.

Home Occupation requirements and standards since 2011

A home occupation shall be permitted as accessory to any principal dwelling unit, provided that the accessory use will not change the character of the residential neighborhood in terms of appearance, noise, odors, traffic, or other impacts. Home occupations shall be subject to the following standards:

1. The business or service is located within the dwelling or an associated accessory building which may include an accessory dwelling unit, and does not exceed 20 percent of the heated floor area of the principal structure or 600 square feet, whichever is less. In no instance shall more than one home occupation use be conducted on a single lot.
2. The principal person or persons providing the business or service resides in the dwelling on the premises.
3. The home occupation employs no more than one person on the premises who does not reside on the premises.
4. The home occupation causes no change in the external appearance of the existing dwelling and structures on the property.
5. All vehicles used in connection with the home occupation are of a size, and located on the premises in such a manner, so as to not disrupt the quiet nature and visual quality of the neighborhood, and there are no more than two vehicles per home occupation. In no instance shall any vehicle with a gross vehicle weight rating exceeding 10,000 pounds be parked, stored, or otherwise maintained at the site of a home occupation.
6. Home occupations shall not result in regular and on-going vehicular traffic to the home where located.
7. There is sufficient off-street parking for patrons of the home occupation, with the number of off-street parking spaces required for the home occupation to be provided and maintained in addition to the space or spaces required for the dwelling itself.
8. Except as may be provided for in Table 30-5.L.6, there are no advertising devices on the property, or other signs of the home occupation, which are visible from outside the dwelling or accessory building.
9. The property contains no outdoor display or storage of goods, equipment, or services that are associated with the home occupation.
10. Wholesale or retail sales of goods do not occur on the premises.
11. The home occupation does not create traffic or parking congestion, noise, vibration, odor, glare, fumes, or electrical or communications interference which can be detected by the normal senses off the premises, including visual or audible interference with radio or television reception.

-Home Occupation as defined in 30-9.D of the city code

A business, profession, occupation, or trade which is conducted within a residential dwelling unit for the economic gain or support of a resident of the dwelling, and is incidental and secondary to the residential use of the lot and which does not adversely and/or perceptively affect the character of the lot or surrounding area. Home occupation includes but is not limited to: offices; electronic and offsite retail; personal services such as physical therapy by licensed individuals, beauty parlors, pet grooming, and the like. Home occupation does not include such businesses as: automotive repair and the like; dentists or physician's offices and the like; any licensed or unlicensed practitioner who

performs invasive procedures (acupuncture, tattooing, body piercing, and the like); restaurants, bars, social clubs and the like; animal kennels or hospitals and the like; or any other business which is clearly inappropriate or out of character for a residential area such that its location constitutes an adverse impact on neighboring residential properties.

-Where permitted as an accessory use

The current table of permitted accessory uses 30-4.D.2.E allows Home Occupations as an accessory use in the following residential zoning classifications: AR, SF6, SF10, SF15, MF5 and MH.

Issues/Analysis:

The combination of standards, types of home occupations, and regulations is typical for all communities to use. The lists always include the phrase “but not limited to” as new forms of businesses constantly happen. A review of newly formed C-Corps, LLCs, and businesses with home addresses attest to hundreds of home occupations being created every year to the thousands already in place in the city. There is no longer business licensing allowed by cities so the actual number of home occupations is not known.

To review Fayetteville’s handling of home occupations, ten other cities’ ordinances were reviewed. The findings are presented in a table and a short note on the thirty (30) variables. Fayetteville has the most restrictive square footage allowed and requiring off-street parking for the home occupations. There is no area where Fayetteville is less restrictive than the peer cities.

Standards from the following cities were collected for comparison:

- Fayetteville
- Asheville
- Cary
- Charlotte
- Durham
- Gastonia
- Greensboro
- Hickory
- Raleigh
- Wilmington
- Winston-Salem

Comparison of Fayetteville Home Occupation Standards to Consensus of Peer Cities

1-Permitted in all residential zonings

Fayetteville in line with consensus of allowing in residential zonings.

2-Special use permit required

Only required by one city.

3-Zoning Permit required

Required by several other cities. Requiring a Zoning Permit would allow Zoning and Code Enforcement to communicate standards to new businesses and to prevent the opening of businesses that will not conform to the code.

4-Number of occupations permitted

Most do not address but those that do only allow one.

5-Maximum percentage of dwelling to be used for Home Occupation

Fayetteville has the most restrictive square footage limit in terms of percentage. Enforcement of this standard is difficult, as it would require extended access into the interior of a dwelling being used for a Home Occupation.

6-Maximum square footage of dwelling to be used for Home Occupation

Fayetteville is mid-range of our peers with total square footage limits. Enforcement of this standard is difficult, as it would require extended access into the interior of a dwelling being used for a Home Occupation.

7-Use of accessory structures permitted

Fayetteville is more restrictive than most of our peers in not allowing any use of accessory structures as part of the Home Occupation.

8- Home Occupation operator must reside at location

Fayetteville in line with consensus.

9-Number of non-resident employees permitted

Fayetteville in line with consensus.

10-Hours of operation limited

Most of our peers do not address this standard. Since the business activity is internal to the dwelling, this standard is difficult to demonstrate and document.

11-Maximum number of customers per day

Only two cities have a standard. Difficult standard to monitor as it would require constant surveillance throughout the day.

12-Maximum number of customers at any one time

Several cap the max number of students but not customers. Difficult standard to monitor as it would require constant surveillance throughout the day.

13-Maximum number of vehicles permitted for clients or visitors

Only one city has this standard.

14-Change in external appearance prohibited

Fayetteville is in line with consensus.

15-Noise, Fumes, Vibrations, Glare, Electrical interference prohibited

Fayetteville is in line with consensus.

16-Retail or wholesale sale of goods from premises prohibited
Fayetteville is more restrictive than most of our peers and does not permit retail sales as part of the Home Occupation.

17-Goods can be shipped from location for internet or mail order
Most do not address.

18-Outdoor storage permitted
Fayetteville in line with consensus.

19-Outdoor display of goods or services permitted
Fayetteville in line with consensus.

20-Storage of explosive or hazardous material prohibited
Not a common standard. This topic is already addressed in the NC Building Code in the Use and Occupancy tables.

21-Signage permitted
Most allow including Fayetteville.

22-Maximum number of signs
Fayetteville in line with consensus.

23-Maximum size of signs (square feet)
Ranges from 1-4. Fayetteville in the middle at 2.

24-Vehicles permitted (associated with Home Occupation)
Most are 1 or 2. Fayetteville is 2.

25-Maximum number of commercial vehicles
Usually goes hand in hand with number of vehicles. Some require screening of heavy vehicles.

26-Size limitation on commercial vehicles
Half are limited. Some address length, GVW and vehicle type. One does not allow logos on the vehicles.

27-Commercial vehicle(s) must be parked in enclosed garage
Fayetteville in line with consensus.

28-Commercial vehicles must display current registration
Fayetteville in line with consensus.

29-Maximum number of additional off-street parking spaces
This limits how many spaces can be added to the residence. Adding spaces changes the exterior appearance. Fayetteville does not have a limit on added spaces other than limiting the vehicular use area maximum in the front yard setback.

30-Minimum number of additional off-street parking spaces

Most do not address. Fayetteville is only city to require space for all vehicles for the residence and spaces for every vehicle parked on the property that is part of the Home Occupation.

Budget Impact:

There is no direct budget impact by this report. However, there is an unknown impact on the city's economy if more stringent limitations of ways to conduct business are made (that are still legally defensible).

Options:

The City Council Directive was to research and bring back the findings to the Council. It is common practice to offer options. The below are presented as general categories of options. No options are presented to address potential fines, which was outside the scope of the directive.

Option 1- City Council moves to direct staff to develop a code text amendment to modify the definition of Home Occupations to prohibit specific home occupations such as: Gymnasiums, Personal Training, Fitness Instruction or Coaching, Strength and Agility Training, Cross-Fit Training, Sports Performance Training, Consultation & Instruction.

Option 2- City Council moves to direct staff to develop code text amendments to add new or change standards relating to Home Occupations. Changes could include limiting hours of operation, limiting number of customers per day, limiting the maximum number of customers permitted to be present at any one time, limiting number of customer vehicles permitted, reducing maximum allowable space to be used, requiring new home occupations to obtain zoning compliance permits and/or requiring specific home occupations to obtain a special use permit prior to operation.

Option 3- City Council moves to take no action and continue enforcement of current Home Occupation standards.

Option 4- City Council has more discussion on the position and policies regarding what constitutes acceptable businesses in residential areas.

Recommended Action:

After discussion, should the Council wish to pursue citywide ordinance changes, several city departments will work on the policy direction and bring points back to the City Council and/or run them through the Council's Planning Commission for work and recommendation as determined by the City Council.

No specific actions are recommended by Staff per the City Council request. The City Council directed Staff to provide research pertaining to commercially operated businesses in residential neighborhoods in order for options to be discussed.

Attachments:

- Home Occupation Standards - Peer City Comparison Chart
- Home Occupation Code Text for the cities of:
 - Asheville
 - Cary
 - Charlotte
 - Durham
 - Gastonia
 - Greensboro
 - Hickory
 - Raleigh
 - Wilmington
 - Winston-Salem