

5
as amended

ORDINANCE NO. 69-21

**AN ORDINANCE AMENDING THE 2019 UNIFIED DEVELOPMENT
ORDINANCE OF THE CITY OF FORT SMITH**

WHEREAS, the Board of Directors passed and approved Ordinance No. 87-19 which adopted the Unified Development Ordinance on October 15, 2019, and,

WHEREAS, is it necessary to amend certain sections of the Unified Development Ordinance to provide clarity and remove conflict with other provisions of the municipal code; and,

WHEREAS, the Planning Commission held a public hearing regarding the amendment and recommended on June 8, 2021, that changes be made; and,

WHEREAS, three (3) copies of July 2021 Amendments to the Unified Development Ordinance have been on file in the Office of the City Clerk of the City of Fort Smith for inspection and review by the public prior to the passage of this Ordinance; and,

WHEREAS, the July 2021 Amendments to the Unified Development Ordinance include an amendment complying with Act 659 to encourage home based entrepreneurship; and,

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS THAT:

SECTION 1: The July 2021 Amendments to the Unified Development are hereby adopted.

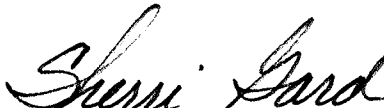
SECTION 2: The codifier shall codify the adopted amendments by amending existing sections and by adding new sections of the UDO at the discretion of the codifier.

SECTION 3: It is hereby found and determined that the adoption of the amendments to the

Unified Development Ordinance are necessary to alleviate an emergency created by the lack of regulation of uses of property within the City of Fort Smith so that the protection of the health, safety and welfare of the inhabitants of the City requires that the amendments be effective, and the amendments are hereby made effective, as of date of approval of the Ordinance.


PASSED AND APPROVED THIS 6th DAY OF July, 2021.

ATTEST:



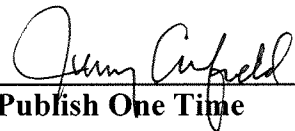
City Clerk

APPROVED:



Mayor

Approved as to form:



Publish One Time

27-337-7 Appeal of Board of Zoning Adjustment Decisions

Decisions of the Board of Zoning Adjustment in respect to the above shall be subject to appeal only to a court of record having jurisdiction.

27-338 Home Occupations

27-338-1 Purpose

- A. **Purpose.** The purpose of this section is to allow residents the privilege of engaging in the limited pursuit of a home occupation. This section is intended to comply with the provisions of Act 659 of 2021 as codified in Ark. Code Ann. Section 14-1-104, and the required license and following regulations for a home occupation are deemed consistent with the regulation of home occupation as permitted by Ark. Code Ann. Section 14-1-104(d). A licensed home occupation allows the resident to operate minimal business activities or offer limited professional services from the resident's home. In granting a request for home occupation license, the Planning Commission may condition and limit the license as necessary to preserve the spirit and intent of this section and controlling law.

~~The purpose of this section is to comply with Act 659 of 2021 and grant the Planning Commission the authority to allow residents in Residential Medium/High Density (R-3), Residential High Density (R-4), and Residential Historic (RH) zones the privilege of engaging in the limited pursuits of home occupations. This would allow residents to operate minimal business activities and offer limited professional services in their homes. The Planning Commission must determine that such activities shall not conflict with the purposes and objectives of this chapter as stated in Section 27-400. The Planning Commission in granting a home occupation request may impose any conditions and limitations it deems necessary for any particular case to preserve the spirit and intent of this section.~~

- B. **Intent.** Home occupations, as allowed by this section, are intended to be clean, quiet, non-obtrusive activities operated on a limited basis with the business use incidental to the residential character of those areas.

27-338-2 Applicants

Applications for home occupations may be filed by the resident or an authorized agent for the resident. All applications shall be submitted to the Planning and Zoning Department for review by the Director and Staff. The application shall be accompanied by a processing fee in an amount to be established by the Board of Directors.

27-338-3 Submission Requirements

The Planning and Zoning Department shall prepare an application form specifying the information to be submitted with the application. An application for Home Occupation shall include at least the following information:

- A.** Identification of applicant as owner or tenant of the property. Where the applicant is not the owner, copy of a letter or other notice provided to the property owner describing the application for home occupation.
- B.** The legal description of the property.
- C.** The street address of the property.
- D.** The present zoning classification of the property.
- E.** The description of the proposed home occupation.
- F.** The names and the addresses of all persons listed on the current tax records as the owners of all property located within three hundred (300) feet of the site, including property across streets, alleys and intersections.
- G.** Any part of a restrictive covenant applicable to the property that appears to prohibit this home occupation request.
- H.** A questionnaire or series of questions about the nature and impact of the use.
- I.** Application fee.
- J.** Other information as identified on the application.
- K.** Other information as requested by the Director, other departments or agencies, the Planning Commission, or the Board of Directors.

27-338-4 Application and Review Procedures

- A. Determination of Completeness.** Applications shall be submitted to the Director for a determination of completeness pursuant to Section 27-303. An application is complete when all of the items required by Unified Development Ordinance and on the application form are prepared and/or answered, and any required supplemental or additional applications are submitted with the appropriate fee to the Planning and Zoning Department.

- B. Neighborhood Meeting.** Even though a neighborhood meeting is not required, pursuant to Section 27-304, the Planning Commission and Planning and Zoning Staff would encourage the applicant to meet with property owners who may be affected by the proposed application.
- C. Staff Review.** Following a determination of completeness, the Staff shall review the application pursuant to Section 27-305.
- D. Notice and Public Hearing.** Following completion of Staff review the application shall be scheduled for a public hearing before the Planning Commission.
1. Notice shall be provided pursuant to Section 27-308. Notice shall be posted and mailed.
 2. The Planning Commission shall consider the criteria listed in Section 27-338-4(F), below in making a recommendation.
- E. Planning Commission Consideration.** The Planning Commission shall review home occupation applications at its regularly scheduled monthly meeting, at which time interested persons may appear and offer information in support of or in opposition to the proposed home occupation.
- F. Minimum Requirements for Consideration.** The Planning Commission, in reviewing applications under this section, may consider the performing of a skill, talent, service or profession on a limited basis as a home occupation only if it complies with all of the following:
1. ~~The area to be used for the home occupation is no greater than thirty (30%) percent of the living space of the residence.~~
 2. There shall be no occupational activity on the premises outside of the residence and the occupational activity shall be incidental and subordinate to the primary use of the premises. ~~main structure. An existing detached building which is utilized in conjunction with a home occupation shall be no larger than three hundred (300) square feet in size and can only be utilized for storage of materials.~~
 3. No sign may be used in the operation of the business.
 4. No outdoor display of any goods or services and no outdoor storage of materials or equipment are allowed.

5. The home occupation is required to be run only by the resident members of the household and shall not have any other employees, concessionaires or other operators or helpers whether such business is conducted on the premises or off the premises.

~~6. No sale of any retail or wholesale item or items is allowed on the premises unless they are considered as an accessory item of the approved business. Items drop shipped or delivered by order may be permissible only after the Planning Commission has approved such operation.~~

7. Any business conducted on the premises shall be by appointment only, such that no more than two (2) patrons shall be at the business at any one time.

8. The Planning Commission shall have the authority to limit the operating hours of a business where it deems it necessary in order to assure compatibility with the residential neighborhood.

9. The resident shall not utilize the address of the property in any form of business advertising. This includes, but is not limited to, paid commercial advertising, telephone directory advertising, flyers, business cards, etc.

10. The home occupation shall not produce any fumes, odors, noise or any other offensive effects that are not normal to residential activity.

11. The home occupation shall not require the construction of any additional off-street parking areas which would detract from the residential character of the neighborhood. The Planning Commission in exceptional circumstances may allow the construction of additional off-street parking, but under no circumstances more than two (2) spaces in addition to those currently in use for residential purposes. All parking and maneuvering areas must be completely contained on private property. A parking site plan must be approved by the Planning Commission where a business would require customers coming to the property.

12. A commercial trash container shall not be utilized.

13. All vehicles shall be parked in compliance with Section 14-52, Section 14-54, and Section 14-55 of the Fort Smith Municipal Code.

G. Determination. The Planning Commission shall then make one (1) of the following determinations on the application:

1. Approve the application as submitted.
2. Approve the application as amended with modification(s).
3. Continue the application to a date certain.
4. Deny the application.

- H. Conditions.** The Planning Commission may impose conditions and restrictions on the property benefited by the home occupation use to reduce or minimize the injurious effects of the home occupation.
- I. Compatibility.** The Planning Commission is not required to approve any application for the operation of any home occupation which, in its opinion, is not compatible with the integrity of the neighborhood.
- J. Verification.** No license for the conduct of any business shall be issued until City Inspections verify compliance with all conditions set by the Planning Commission.

27-338-6 Conditions

In approving a home occupation application, the Planning Commission has granted an applicant the privilege of engaging in a designated business at the designated address. An approved home occupation and the license thereof cannot be transferred or relocated to another address. Approved home occupations and the license thereof cannot be transferred to any other person. Any approved home occupation which is discontinued for a period of twelve (12) months or more shall be deemed abandoned and the re-establishment of such business shall require the re-application and approval of the Planning Commission as required by this section.

27-338-7 Established Home Occupations

Legally established businesses, occupations or professions conducted at the time of the effective date of Unified Development Ordinance in a residential structure, or accessory building in a residential use area may be continued until that particular business is abandoned for a period of twelve (12) months provided that this shall not be construed to approve continuation of any activity constituting a common law nuisance, or activity prohibited by the statutes, ordinance or restricted covenants applicable to the area.

27-338-8 Appeals

The Board of Directors shall hear appeals from the decision of the Planning Commission in respect to the approval of applications as defined in this section. Any such decision may be appealed by any person having an interest therein by the filing of a written notice of appeal with the City Clerk before 5:00 p.m. on the tenth calendar day following the date of the decision of the Planning Commission. A fee in the amount established by Board of Directors shall be required at the time any appeal is filed in respect to a home occupation application ruling of the Planning Commission.

Sec. 27-338-9 Enforcement

- A.** This section shall be enforced by the City Administrator, or designated agent, who shall investigate complaints and routinely conduct inspections of occupations operating hereunder.
- B.** When any substantial violation is detected, the operator shall be notified in writing that the home occupation privilege and the privilege license are revoked and terminated effective fifteen (15) days from date of notice.
- C.** The operator may within fifteen (15) days of the date of the notice, file a notice of appeal to the Planning Commission, which shall hear such appeal in a regularly scheduled meeting.
- D.** In the event of such appeal, revocation and termination, where no violation of other ordinances is involved, enforcement action shall be delayed until ten (10) days following the decision of the Planning Commission.
- E.** Where such appeal is requested, the Planning Commission shall hear the facts and determine whether or not the privilege and license shall be terminated for failure to comply with the requirements of this section or other conditions set at the time of approval; or the Planning Commission may issue whatever other direction it may deem appropriate and consistent with the purposes of this section.
- F.** If all such operations have not ceased upon termination of the privilege, the owner of the home occupation shall be guilty of a misdemeanor and shall be subject to the penalties as delineated in Section 1-9 of this Code.
- G.** Any appeal to the decision of the Planning Commission pertaining to such revocation or termination shall be to a court of appropriate jurisdiction.

27-339 Vested Rights Determination
--

27-339-1 Purpose.
