

ORDINANCE NO. 791

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, ADDING SECTION 15-14 (HOME OCCUPATIONS), AMENDING SECTION 15-11 (DEFINITIONS), AND AMENDING SECTION 15-02-004(B)(2) (HOME-BASED BUSINESSES) OF THE UNIFIED DEVELOPMENT CODE OF THE TOWN OF PAYSON.
(HOME OCCUPATIONS)

WHEREAS, the Town of Payson regulates the businesses within the Town, including Home Occupations; and

WHEREAS, the Town desires to enable its residents to use their residence for Home Occupations to facilitate economic development; and

WHEREAS, the Town also recognizes the need to protect surrounding residential uses from potential adverse impacts generated by business activities; and

WHEREAS, the Town believes that the Home Occupation regulations set forth in Section 15-14 balance these two policies; and

WHEREAS, the Town of Payson now desires to adopt Section 15-14 (Home Occupations) and conforming changes,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY ORDAIN AS FOLLOWS:

- Section 1. Section 15-14 (Home Occupations) of the Unified Development Code set forth in Resolution 2577 was heretofore declared to be a public record, and the provisions thereof are hereby referred to and adopted by this reference as though all the provisions thereof were set forth in full in this Ordinance.
- Section 2. Amendments to Section 15-11 (Definitions) of the Unified Development Code set forth in Resolution 2577 were heretofore declared to be a public record, and the provisions thereof are hereby referred to and adopted by this reference as though all the provisions thereof were set forth in full in this Ordinance.
- Section 3. At least three copies of the amendments adopted by Sections 1 and 2 above, shall be filed in the Office of the Town Clerk of the Town of Payson and the same shall be maintained and kept available for public use and inspection.
- Section 4. Section 15-02-004(B)(2) of the Unified Development Code is hereby amended and shall read as follows:

2. Reserved.

~~2. Home-Based Businesses~~

- ~~a. Definition - A home-based business is any business, occupation or commercial activity undertaken within a residential structure that is incidental and secondary to the use of that structure as a dwelling unit.~~
- ~~b. Intent / Purpose - The Town of Payson desires to enable its residents to use their residence for home-based business activities to facilitate economic development, but also recognizes the need to protect surrounding areas from potential adverse impacts generated by business activities. The action of approving a home-based business contains a finding that the use will not generate impacts different from the use of the property as a residential dwelling unit.~~
- ~~c. Licensing & Inspections - A home-based business must secure and maintain a Payson Business License and a Transaction Privilege Tax License from the Arizona Department of Revenue. As a condition of issuing and maintaining a Business License, a homebased business licensee must allow inspections to be conducted by representatives of the Community Development and Fire Departments to verify compliance with standards and limits prescribed by this Code and stipulations of Conditional Use Permits. Such inspections shall occur between the hours of 8 AM and 5 PM and only upon 24 hours notice to the licensee.~~
- ~~d. Use of the Residence - A home-based business must be conducted within the principal residential structure and permitted accessory structures. Only an occupant/owner or occupant-lessee of a premise may own and operate a home-based business. The use must not change the character of the dwelling unit. The use must be conducted entirely within an enclosed structure with no outside business activities or outside storage, unless authorized by a conditional use permit.~~
- ~~e. Prohibited Home-Based Businesses - The following uses are prohibited in the residential zoning districts:
 - ~~(1) Barber shops and beauty salons~~
 - ~~(2) Motor vehicle repair services~~
 - ~~(3) Kennels, stables, pet grooming services, veterinarian clinics~~
 - ~~(4) Medical and dental clinics~~
 - ~~(5) Restaurants, clubs and drinking establishments~~
 - ~~(6) Undertaking and funeral parlors~~
 - ~~(7) Adult entertainment establishments, adult retail establishments, adult theaters~~
 - ~~(8) Taxi services, transit, express mail or package carriers~~
 - ~~(9) Storage of firewood for sale~~~~
- ~~f. Home-Based Business Operational Standards
 - ~~(1) Operating Limits - No visible or audible indications of business activities, other than those typical of a residential dwelling unit,~~~~

shall be permitted before 8:00 AM or after 8:00 PM.

- ~~(2) Advertising - Advertising signs on the exterior of the premises of a home-based business are prohibited, except for identification signs on one motor vehicle that may be parked on the premises.~~
- ~~(3) Vehicles
 - ~~(a) No person operating a home-based business shall use or cause delivery vehicles to visit their premises except for passenger vehicles, mail carriers and express carriers, such as vehicles used by United Parcel Service and Federal Express.~~
 - ~~(b) Home-based businesses are not required to provide parking beyond what is required for residential use, but on-street parking is prohibited.~~
 - ~~(c) A home-based business shall be limited to the parking or storage of one vehicle on the premises that is used in the business, but it may not exceed one-ton capacity.~~~~
- ~~(4) Employees - A home-based business shall have no nonresident employees on the premises at any time, unless authorized by a conditional use permit.~~
- ~~g. Limits on Equipment / Operation Nuisances - The operation of home-based business equipment, not typically used in residential dwelling units shall not:
 - ~~(1) Create vibrations, heat, glare, dust, odors, or smoke discernable at the property lines;~~
 - ~~(2) Generate noise discernable by the human ear at the property lines;~~
 - ~~(3) Create electrical or magnetic interference off the premises of the dwelling unit; or,~~
 - ~~(4) Consume utility quantities that negatively impact the delivery of those utilities to surrounding properties.~~~~
- ~~h. Fire Code Compliance - A home-based business shall conform to the requirements set forth in the adopted Fire Code. No flammable liquids or hazardous materials may be handled, used or stored incidental to a home-based business.~~
- ~~i. Approval Authority -
 - ~~(1) A home-based business may be approved administratively by the Community Development Director, his or her designee, with an application for a Business License, if the owner / operator provides written certification that the business use of a dwelling unit will comply with this Code. Such written certification shall be incorporated and made part of the Business License.~~
 - ~~(2) Approval of a Conditional Use Permit is required for any of the following homebased business uses:
 - ~~(a) Day Care Centers~~
 - ~~(b) Uses that have more than two customer / Client visits per~~~~~~

day

- ~~(c) Uses that have outside business activities or outside storage~~
- ~~(d) Uses requiring more off street parking spaces than required for residential use~~
- ~~(e) Uses desiring a nonresident employee on the premises; however in no case shall home-based business employ more than one nonresident employee.~~
- ~~(f) Bed and Breakfast establishments which shall be owner-occupied and have no more than four (4) units.~~
- ~~(3) In considering an application for a Conditional Use permit for a home-based business, the Planning and Zoning Commission shall review the size and zoning of the parcel, the size of the principal residential structure and accessory structures. Larger parcels and structures in low density zoning districts may more reasonably accommodate uses enumerated at subparagraph (2) of this section; than such uses on smaller parcels and structures in high density zoning districts.~~
- ~~(4) Stipulations to a Conditional Use Permit for a home-based business may include requirements for screening, additional dust-free parking spaces, requirements to relocate additional parking spaces outside of the front and side yard setback areas and other measures consistent with the purpose of maintaining the residential character of the dwelling unit.~~

j. ~~Enforcement~~

- ~~(1) The Town of Payson will not enforce subdivision covenants, conditions and restrictions (CC & R's) that may be more or less restrictive than standards and limits prescribed by this Code. Subdivision covenants, conditions and restrictions are terms of contracts between private property owners. CC & R's and provisions of this Code are independently enforceable against the property owner in a court of jurisdiction.~~
- ~~(2) Complaints alleging violations of home-based business standards and limits prescribed by this Code or stipulations of a Conditional Use Permit shall be submitted to the Community Development Department for potential enforcement action.~~
- ~~(3) The Community Development Department will attempt to hold the identity of complainants confidential unless court enforcement is necessary. In a court proceeding, the complaining party usually must be made known to the offending party and subpoenaed as a witness in court, where he or she may be confronted and cross-examined.~~
- ~~(4) A violation of this Code or a stipulation of a Conditional Use Permit shall be cause for revocation of a Business License.~~

Section 5. All ordinances and parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 6. If any section, subsection, or portion of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Mayor and Common Council declares that it would have adopted this Ordinance and each section, subsection, or portion despite the fact that any one or more sections, subsections, or portions would be declared invalid or unconstitutional.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this _____ day of November, 2010, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk



Timothy M. Wright, Town Attorney

**RESOLUTION NO. 2577 IS
PROVIDED FOR INFORMATION
ONLY
AT THE 10/21/10 COUNCIL MEETING.**

**RESOLUTION NO. 2577 WILL
BE AGENDIZED AS AN ACTION ITEM
AT THE 11/4/10 COUNCIL MEETING.**

RESOLUTION NO. 2577

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, ADDING SECTION 15-14 (HOME OCCUPATIONS) AND AMENDING SECTION 15-11 (DEFINITIONS) OF THE UNIFIED DEVELOPMENT CODE OF THE TOWN OF PAYSON AND DECLARING SUCH AMENDMENTS TO BE A PUBLIC RECORD. (HOME OCCUPATIONS)

WHEREAS, the Code of the Town of Payson was declared to be a public record by Resolution Number 1536 and was adopted as a public record by Ordinance Number 588; and

WHEREAS, it is the intention of the Town of Payson to add Section 15-14 (Home Occupations) and amend Section 15-11 (Definitions) of Unified Development Code of the Town of Payson; and

WHEREAS, such amendment may be enacted by reference, pursuant to A.R.S. § 9-802,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1. Section 15-14 (Home Occupations) of the Unified Development Code of the Town of Payson is hereby added, is declared to be a public record, and shall read as set forth in Exhibit A.

Section 2. Section 15-11 (Definitions) of the Unified Development Code of the Town of Payson is hereby amended to include the additional definitions set forth in Exhibit B, such amendments are declared to be a public record, and such additional definitions shall read as set forth in Exhibit B.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this ____ day of November, 2010, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk

Timothy M. Wright, Town Attorney

EXHIBIT A TO RESOLUTION 2577

15-14 HOME OCCUPATIONS

15-14-001 Purpose and Intent

The Town of Payson desires to enable its residents to use their residence for Home Occupations to facilitate economic development, but also recognizes the need to protect surrounding residential uses from potential adverse impacts generated by business activities. The action of approving a Home Occupation constitutes a finding that the use will not adversely impact surrounding properties.

15-14-002 Applicability

The requirements of this Section shall be applicable to all areas that are zoned residential and all areas where a residential use has been established regardless of zoning classification.

15-14-003 Home Occupations

- A. No Home Occupations shall be operated unless such Home Occupation is in compliance with the provisions of this Section and any Conditional Use Permit required and obtained pursuant to this Section.
- B. Except as otherwise provided in this Section, Home Occupations are subject to all of the requirements of the Unified Development Code and the Code of the Town of Payson including, but not limited to, all adopted fire and/or construction codes.

15-14-004 Licensing, Inspections, and Approvals

- A. All Home Occupations are subject to the provisions of Chapter 110 (Business Licensing) of the Code of the Town of Payson.
- B. Representatives of the Community Development and Fire Departments may inspect any Home Occupation to verify compliance with provisions of this Section, stipulations of any Conditional Use Permit issued pursuant to this Section, and compliance with all other Town Codes including, but not limited to the adopted fire and building codes. Unless a potential hazard involving life and/or safety is involved, all such inspections shall occur between the hours of 8:00 a.m. and 5:00 p.m. and upon 24 hours notice.

C. Approvals

1. Prior to operating a Home Occupation, the owner/operator of such Home Occupation shall submit a written description of the Home Occupation and certify that the Home Occupation will comply with the provisions of this Section.
2. An approval for a Level One or a Level Two Home Occupation will be issued by the Community Development Director concurrently with the issuance of a Business License. If a Business License is not required, an approval of a Level One or Level Two Home Occupation may be issued at anytime.
3. Approvals for Level Three Home Occupations (Conditional Use Permits) shall be issued in accordance with Section 15-09-004.
4. An approval obtained pursuant to this subsection shall satisfy the Business Occupancy Permit under Section 110.07 of the Town Code.
5. The Town of Payson does not enforce covenants, conditions and restrictions (CC&R's). Nothing in this Section restricts, amends or changes any covenants, conditions and restrictions.

15-14-005 Prohibited Home Occupations

The following uses shall be prohibited as Home Occupations except as noted:

- A. Motor vehicle repair services
- B. Kennels
- C. Restaurants, clubs and drinking establishments
- D. Undertaking and funeral parlors
- E. Adult uses, including but not limited to entertainment establishment and theaters.
- F. Storage of firewood for sale
- G. Taxi services; transit, express mail or package carriers.
- H. Stables and pet grooming services.

15-14-006 Level One - Minor Home Occupations

A. Scale/Character

A Level One - Minor Home Occupation is a Home Occupation conducted entirely within a residence, is clearly incidental to the use of the structure as a residence, and commensurate with quiet family living.

B. Allowable Locations

Any single family residence, apartment, condominium, guest house, guest quarters, or accessory dwelling unit located in any zoning district.

C. Employees

No employees other than immediate family members residing at the residence are permitted unless authorized by a Conditional Use Permit. Under a Conditional Use Permit, no more than one non-resident employee may be allowed.

D. Accessory Space, Storage, and Outside Uses/Displays

1. Accessory Space may be used only for storage
2. Outside storage and/or uses are prohibited
3. No product, merchandise, or goods may be displayed in a manner so that it is visible from outside the residence.

E. Vehicles/Traffic, Parking, and Access

1. Total Vehicle Trips shall not exceed 2 per day.
2. Vehicles associated with the Home Occupation and parked on site shall:
 - a. not exceed two at any time, including employee and client vehicles;
 - b. not be larger than one ton type vehicles; and
 - c. be in a number and of a type typically associated with a residential use.
3. Additional parking is not required beyond what is required for residential use.

4. Vehicles related to the Home Occupation shall not be stored, parked, or repaired on the public right of way.
5. Delivery vehicles other than passenger vehicles, mail carriers, and express carriers (such as U.S. Postal Service, United Parcel Service, and Federal Express) are prohibited.

F. Noise

1. No noise that is discernable outside the residence is permitted.
2. Noise generated by passenger vehicles is exempt from the provisions of this Subsection.

G. Equipment

Equipment not typically associated with residential uses that is used in the Home Occupation shall not (1) create vibrations, heat, glare, dust, odors, or smoke discernable at the property lines; (2) create electrical or magnetic interference off the premises of the dwelling unit; or (3) consume utility quantities that negatively impact the delivery of those utilities to surrounding properties.

15-14-007 Level Two - Intermediate Home Occupations

A. Scale/Character

A Level Two - Intermediate Home Occupation is a Home Occupation conducted predominantly within a single family residential unit located in a transitional area between commercial uses and quiet single family living, that is incidental to the use of the structure as a residence, has limited parking and vehicular traffic, and retains its residential character.

B. Allowable Locations

1. Any single family detached residence located in a R2 or R3 zoning district.
2. Any single family detached residence located in a R1 zoning district that fronts and takes access from an arterial roadway.
3. Any single family detached residence located on a parcel that is either one acre or more in size, or exceeds the zoning district

minimum lot size by 100%.

4. Level Two - Intermediate Home Occupations are prohibited in town houses, apartments, condominiums, guest houses, guest quarters, or accessory dwelling units.

C. Employees

Up to three employees are permitted.

D. Accessory Space, Storage, and Outside Uses/Displays

1. Use of up to 500 square feet of Accessory Space is permitted.
2. Outside storage and/or uses are prohibited.
3. No product, merchandise, or goods may be displayed in a manner so that they are visible from outside the residence.

E. Vehicles/Traffic, Parking, and Access

1. Total Vehicle Trips shall not exceed 20 per day.
2. Vehicles associated with the Home Occupation and parked on site shall:
 - a. not exceed four at any time, including employee and client vehicles;
 - b. not be larger than one ton type vehicles; and
 - c. be in a number and of a type typically associated with a residential use.
3. Employee and client parking shall be in defined areas and such areas shall be accessible, designed, and surfaced for parking.
4. Vehicles related to the Home Occupation shall not be stored, parked, or repaired on the public right of way.
5. All vehicular traffic shall access via a public or private roadway.

F. Noise

1. Between 8:00 a.m. and 5:00 p.m. no noise that exceeds the greater of 60 dba or the ambient noise level outside the residence is permitted.

2. Between 5:00 p.m. and 8:00 a.m., no noise that is discernable outside the residence is permitted.
3. Noise generated by passenger vehicles is exempt from the provisions of this Subsection.

G. Equipment

Equipment not typically associated with residential uses that is used in the Home Occupation shall not (1) create vibrations, heat, glare, dust, odors, or smoke discernable at the property lines; (2) create electrical or magnetic interference off the premises of the dwelling unit; or (3) consume utility quantities that negatively impact the delivery of those utilities to surrounding properties.

15-14-008 Level Three - Major Home Occupations

A. Scale/Character

A Level Three - Major Home Occupation is a Home Occupation conducted predominantly within a single family residential unit located in a commercial area that could accommodate a limited number of employees and vehicle traffic, and such use does not detract from any adjoining residential uses.

B. Allowable Locations

1. With the issuance of a Conditional Use Permit, in any single family detached residence located within a commercial zoning district.
2. Level Three - Major Home Occupations are prohibited in town houses, apartments, condominiums, guest houses, guest quarters, or accessory dwelling units.

C. Employees

Up to five employees may permitted.

D. Accessory Space, Storage, and Outside Uses/Displays

1. Use of up to 1500 square fee of Accessory Space is permitted
2. Outside storage and/or uses are prohibited

3. No product, merchandise, or goods may be displayed in a manner so that they are visible from outside of the residence.

E. Vehicles/Traffic/Parking/Access

1. Total Vehicle Trips shall not exceed 30 per day.
2. Vehicles associated with the Home Occupation and parked on site at any time shall not exceed five, including employee and client vehicles.
3. Employee and client parking shall be in defined areas and such areas shall be accessible, designed, and surfaced for vehicular parking.
4. Vehicles related to the Home Occupation shall not be stored, parked, or repaired on the public right of way.
5. All vehicular traffic shall access via an improved public roadway.

F. Noise

1. Between 8:00 a.m. and 5:00 p.m. no noise that exceeds the greater of 60 dba or the ambient noise level outside the residence is permitted.
2. Between 5:00 p.m. and 8:00 a.m., no noise that is discernable outside the residence is permitted.
3. Noise generated by passenger vehicles is exempt from the provisions of this Subsection.

G. Equipment

Equipment not typically associated with residential uses that is used in the Home Occupation shall not (1) create vibrations, heat, glare, dust, odors, or smoke discernable at the property lines; (2) create electrical or magnetic interference off the premises of the dwelling unit; or (3) consume utility quantities that negatively impact the delivery of those utilities to surrounding properties.

15-14-009 Relief

- A. Relief from the prohibitions under 15-14-005(G) and/or (H) may be granted through the issuance of a Conditional Use Permit.
- B. Except as set forth in Subsection C below, a Home Occupation having direct vehicular access from an improved dedicated roadway that is classified as a collector, arterial, or highway (as identified in the Town of Payson Roadway Classification) may be granted relief from any of the standards set forth in 15-14-006 through 15-14-008 through the issuance of a Conditional Use Permit.
- C. The following limitations apply to all Home Occupations

Accessory Space shall not exceed 3,000 square feet.
- D. An applicant seeking relief pursuant to this Subsection shall demonstrate (1) the availability of services adequate to serve the proposed use, including transportation, public facilities and other services existing or planned for the area affected by the use; and (2) compatibility with existing land uses.
- E. In determining if a Conditional Use Permit should be issued pursuant to this Subsection, the following factors shall be considered:
 - 1. The number of specific standards from which relief is sought; it is presumed that the more standards are exceeded, the more difficult it will be to demonstrate compatibility;
 - 2. The character of the neighborhood, including such factors as the presence of other similar uses, proximity of other dwellings, the level of surrounding traffic, the size of accessory buildings, background noise levels, and other outside uses;
 - 3. The ability to mitigate impacts by screening, landscaping, building location, building design and other property improvements (for example driveway or road improvements);
 - 4. Potential environmental impacts, including effects on air and water quality;
 - 5. Provision of adequate and safe access to public roadways; and
 - 6. All other factors listed in 15-09-004.

EXHIBIT B TO RESOLUTION 2577

Definitions Added to Section 15-11

Home Occupation – An occupation or business activity conducted in whole or in part in a residence and/or an accessory space; is conducted by at least one family member occupying the dwelling; and is clearly subordinate to the residential use of the property.

Operator (for the purpose of 15-14) – The person who conducts a Home Occupation, has majority ownership interest in the business, lives full-time in a dwelling on the subject property, and is responsible for strategic decisions and day-to-day operations of the business.

Accessory Space (for the purpose of 15-14) – Any building space not constructed to residential standards, under the adopted building code of the Town of Payson, that is used for a Home Occupation, including but not limited to an attached garage, detached garage, or shed. Accessory space does not include manufactured dwellings, residential trailers or recreational vehicles.

Employee (for the purpose of 15-14) – Any on-site person not residing at the residence, whether they work full-time or part-time in a Home Occupation, including but not limited to partners, assistants, and any other persons or family members participating in the operation of the business.

Incidental Use – The use of no more than 25% of the floor area of a structure or 500 square feet, whichever is less.

Vehicle (for the purpose of 15-14) – Any motorized or non-motorized transportation equipment intended for use on public roads and associated with a Home Occupation, including but not limited to a car, van, pickup, motorcycle, truck, detached trailer or truck tractor with no more than one trailer. An exception may be made for a detached trailer or trailers, which may be categorized as equipment if stored within an enclosed building approved for this use through a Home Occupation permit. Accessory space utilized for storage of a trailer shall be included in the calculation of total accessory space approved for the home occupation.

Vehicle Trip – A vehicular movement either to or from the subject property by any vehicle used in a Home Occupation, including, but not limited to delivery vehicles associated with a Home Occupation and customer, client, or employee vehicles.