

CHAPTER 15.1
HOME OCCUPATIONS

SECTION:

- 10-15.1- 1: Home Occupation Defined
- 10-15.1- 2: Terms Defined
- 10-15.1- 3: Uses Allowed
- 10-15.1- 4: Application Procedure
- 10-15.1- 5: Guidelines
- 10-15.1- 6: Permit
- 10-15.1- 7: Exemptions
- 10-15.1- 8: Periodic Review
- 10-15.1- 9: Fees and Costs
- 10-15.1-10: Revocation
- 10-15.1-11: Penalty
- 10-15.1-12: Existing Home Occupations
- 10-15.1-13: Child Care Provisions
- 10-15.1-14: Severability Clause

10-15.1-1: HOME OCCUPATION DEFINED:

HOME OCCUPATION: A home occupation is an occupation or profession (but not a business) conducted entirely within a dwelling or garage and carried on by the residents legally residing in such dwelling. Such occupation or profession shall be clearly incidental and secondary to the use of the dwelling for residential purposes. Home occupations may not be conducted upon or in any accessory building. A home occupation shall be allowed only in districts zoned for residential purposes.

10-15.1-2: TERMS DEFINED: As used in this Chapter, the following terms shall have the following meanings:

ACCESSORY BUILDING: A building or structure used for the benefit of the main building or dwelling; e.g. tool shed. Out buildings.

- BUSINESS:** A vocation, trade, or calling for profit which principally takes up one's time, thought, and energies wherein items, property, or things are sold at either retail or wholesale.
- DWELLING:** The house or other structure in which a person or persons live; a residence; abode; habitation. A dwelling does not include accessory buildings, garages, or other structures or buildings.
- FLOOR AREA:** The area included within the surrounding exterior walls of a building or portion thereof, exclusive of vent shafts and courts. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above.
- GARAGE:** A building, or a portion of a building, not more than one thousand (1,000) square feet in area, in which only motor vehicles used by the occupant of the building or buildings on the premises are stored or kept.
- OCCUPANT:** A person having lawful possession of and passessory rights in and to the dwelling. That person who has the lawful use, possession, or control of the dwelling.
- OCCUPATION:** A vocation, trade, or calling for profit which principally takes up one's time, thought, and energies; especially, one's regular employment, excluding the sale at retail or wholesale of property, real or personal. As a prerequisite, an occupation frequently is typified by a specialized trades course or courses. The labor and skill involved is predominately physical or manual, rather than mental or intellectual.
- PREMISES:** The land and tenements; the estate, including the land and buildings thereon.
- PROFESSION:** A vocation, calling, or employment involving labor, skill, education, special knowledge, and compensation for profit, but the labor and skill involved is predominately mental or intellectual, rather than physical or manual. As a prerequisite, a profession usually is typified by long and intensive academic preparation beyond the undergraduate level.

10-15.1-3: USES ALLOWED: A home occupation is allowed only if an occupant of the premises has obtained a home occupation permit as required by the Chapter. The allowance of home occupations is not intended to nor shall it be construed to abrogate or otherwise modify other zoning restrictions, subdivision restrictions or covenants, or other restrictions that may apply to property for which a home occupation permit is granted.

10-15.1-4: APPLICATION PROCEDURE: Any person desiring to obtain a permit for a home occupation shall make an application for same with the Planning and Zoning Commission of the City. The application shall be made on such forms as required by the City. There shall be a nonrefundable fee of fifty dollars (\$50.00) for the initial application.

10-15.1-5: GUIDELINES: A person obtaining a home occupation permit shall operate and conduct same in conformity with all of the following conditions unless a waiver pursuant to paragraph (N) of this Section is granted.

- (A) The home occupation shall be carried on only in the dwelling and/or garage subject to the following restrictions:
1. In the dwelling, the area used for a home occupation shall not exceed twenty percent (20%) of the total gross floor area.
 2. The garage may be used for home occupation purposes provided that the area used does not exceed fifty percent (50%) of the gross ground floor area of the garage, and further provided that such usage does not cause the garage to be permanently unusable for parking purposes.
 3. In no event shall the total area used for a home occupation in the dwelling and garage exceed three hundred (300) square feet.
- (B) No persons other than the people legally residing at the premises shall be employed for a salary, commission or upon any other remunerative basis; nor shall any such person report for work at or near the premises.
- (C) No mechanical or electrical equipment shall be used in a home occupation other than that which is customarily used for domestic or hobby purposes.
- (D) No exterior evidence or indication that a home occupation is being conducted on the premises is allowed, nor shall any variance for signs for a home occupation be allowed, except that one nonilluminated name plate, not more than two (2) square feet in area, may be attached to the dwelling or garage in which the home occupation is located, which name plate shall contain only the name and occupation or profession of the permit holder.
- (E) The home occupation shall not generate heat, noise, glare, vibration, smoke emission, noxious or toxic fumes, odors, vapors, or electrical interference which are readily detectable at any point on the boundaries of the premises.

- (F) The home occupation shall not involve the use of commercial vehicles for the delivery of materials to or from the premises, except that reasonable deliveries for uses as set forth in Section 10-15.1-7(D) of this Chapter are allowed.
- (G) No article shall be sold or offered for sale on the premises except such as is produced on the premises or is provided incidental to the service or profession conducted therein.
- (H) Exterior storage of material or equipment is expressly prohibited.
- (I) Only one home occupation permit per premises shall be allowed.
- (J) The proposed home occupation use shall be such that it will not adversely affect other property in the neighborhood.
- (K) Adequate facilities, access roads, drainage, and other necessary supporting facilities are available or will, if necessary, be provided by the applicant.
- (L) Any additional traffic and/or parking problems reasonably expected to be generated by the one occupation shall not be such that it could be reasonably expected to adversely affect the residential character of the neighborhood, unduly impede surrounding traffic flows, or create hazardous or unsafe conditions in the neighborhood.
- (M) The home occupation shall comply with all applicable Federal, State, County and City laws, rules, regulations, and ordinances.
- (N) A person may be entitled to a waiver of one or more of the guidelines set forth in subsections (A) through (L), inclusive, of this Section upon the showing of all of the following:
 1. That such waiver is necessary because strict compliance with all of the guidelines would prohibit the granting of a home occupation permit as requested.
 2. That there is no other practical method in which the applicant could conduct the home occupation without the allowance of a waiver.
 3. That strict compliance with all the of guidelines would cause a hardship to the applicant, as distinguished from a mere inconvenience.
 4. The allowance of a waiver shall not be in derogation of any of the guidelines set forth in subsections (J) through (M), inclusive, of this Section; and the applicant shall show by clear and convincing evidence the necessity for granting a waiver.
- (O) Such other terms and conditions as may be imposed upon the granting of a home occupation permit.

10-15.1-6: PERMIT: In the event an application is approved, then a home occupation permit shall be issued to the applicant. Said permit shall apply only to the applicant, occupation, and premises stated in the application. The permit is non-transferable and nonassignable and shall remain in full force and effect unless revoked pursuant to Section 10-15.1-10 of this Chapter. Said permit shall also be deemed to be automatically revoked upon the earliest of the following: The applicant dies; the applicant moves from the premises where the permit was granted; or the applicant otherwise ceases engaging in the home occupation.

The permit upon original issuance shall be valid for a period of twenty four (24) months from and including the date of its issuance. The permit may be (but need not be) renewed for a like period of time upon re-application conforming to the requirements of original application.

The permit shall be prominently and publicly displayed in that portion of the premises affected by the permit.

10-15.1-7: EXEMPTIONS: A person shall not be considered to be engaged in a home occupation under the following circumstances:

- (A) The use of a residence by a physician, surgeon, dentist, lawyer, clergyman, or other professional person for consultation or emergency treatment, but not for the general practice of the profession; nor shall such usage be on a routine or regular basis. Such use shall not be considered exempt if a person advertises his or her availability for consultation at the residence.
- (B) The listing of the premises in a telephone book or similar directory whereby a business name is used, which in and of itself shall not be considered to mean that a person is engaging in a home occupation.
- (C) A person using a premises as defined and allowed in this Section shall not engage in or permit other persons to visit the premises for the purpose of conducting or transacting business except on a sporadic basis. It is the intent of this Section to prohibit such usage that would occur on a regular basis or as a part of the conducting of a business but not otherwise isolated or sporadic visits.
- (D) Any person engaged in wholesaling, jobbing, or retail business, if said activity is conducted entirely by mail and/or telephone.
- (E) Teaching or other types of instruction shall not be considered a home occupation provided same is limited to one pupil at a time.
- (F) The aforesaid activities described in this Section shall be considered exempt only if the person conducting same is not engaged in any activity that would otherwise be prohibited by Section 10-15.1-5 of this Chapter.

10-15.1-8: PERIODIC REVIEW: The Planning and Zoning Commission shall annually review all outstanding home occupation special use permits for compliance with the terms and conditions of this Chapter and for compliance with the terms and conditions of the permit. Notice by publication shall be given of the review in the same manner as notice by publication of hearing on original applications. Should the Commission find as a result of such a review that the permit holder is not or has not complied as aforesaid, the Commission may either (1) grant a reasonable period of time not to exceed sixty (60) days for the permit holder to come into compliance and to prove compliance at a subsequent review; (2) recommend to the City Council that the permit be revoked; or, (3) both.

10-15.1-9: FEES AND COSTS: The original applicant or permit holder shall be charged and shall pay all reasonable costs and expenses incurred by or on behalf of the Commission or City Council in the investigation of the original applications and in the review of permit holders. Examples of such costs are, but are not limited to: The costs of professional assistance such as by the City Engineer or the City Attorney; the cost of City support staff; and, the cost of notice by publication. Failure of the applicant or permit holder to pay all such costs within thirty (30) days of the costs being billed shall constitute an automatic revocation of the permit.

10-15.1-10: REVOCATION: In the event a person is granted a home occupation permit and such person is convicted of violating any of the provisions of Title 10 of the Canton Municipal Code or of violating any other provision of the Canton Municipal Code, then such home occupation permit shall be automatically revoked.

10-15.1-11: PENALTY: Any person who conducts a home occupation in violation of any of the provisions of this Chapter shall be fined not less than twenty five dollars (\$25.00) nor more than five hundred dollars (\$500.00) for each offense. Each day that a violation occurs shall constitute a separate offense.

In addition to the foregoing penalty provisions, the proper authorities of the City may institute any appropriate action or proceedings, including the obtaining of an injunction to prevent such further activity. The defendant in any such action shall be responsible for the reasonable costs of such action, to include, but not limited to, the City's court costs and attorney fees. Such sums shall be made a part of any judgment entered and shall be enforceable as part of the final judgment.

10-15.1-12: EXISTING HOME OCCUPATIONS: Any person engaged in a home occupation at the time of passage of this Chapter shall have a period of sixty (60) days from said date to apply for a home occupation permit subject to the following:

- (A) The applicant must provide adequate proof that he or she has been engaged in a home occupation prior to the date this Chapter was passed.
- (B) The applicant must clearly state the home occupation and premises involved.
- (C) In the event an applicant is unable to comply with any or all of the provisions of Section 10-15.1-5 of this Chapter, then such applicant shall in his or her application clearly set forth which provisions he or she cannot comply with and the reasons therefor.

The Planning and Zoning Commission is determining whether or not to recommend the waiver of any or all of the provisions of Section 10-15.1-5 of this Chapter, shall use the following criteria:

1. The hardship upon the applicant if a waiver is not granted.
 2. The history of the applicant's business and whether it has had any detrimental effect on the residential character of the neighborhood.
 3. Whether the granting of the waiver will have a detrimental effect upon the residential character of the neighborhood.
- (D) Any applicant who obtains a home occupation permit under these provisions and who subsequently conducts same in violation of any of the terms and conditions of this Chapter or in violation of any waivers granted hereunder shall be subject to all of the penalty and revocation procedures of this Chapter.
 - (E) The application to be made hereunder shall be made to the Planning and Zoning Commission and shall not require the payment of any fee if made within the aforesaid sixty (60) day period.
 - (F) Any person who has previously obtained a special use permit pursuant to the provisions of prior law shall not be required to obtain a home occupation permit and may continue to engage in such home occupation subject to the provisions of the prior law and such conditions as may have been imposed upon the granting of such special use permit.

10-15.1-13: CHILD CARE PROVISIONS:

- (A) A person providing child care for gain on a regular basis for unrelated persons shall not be considered engaged in a home occupation provided said person provides such care for no more than three (3) persons at a time.
- (B) A person providing child care for gain on a regular basis for unrelated persons and further provided that such care is for four (4) through seven (7) persons at a time shall be required to obtain a home occupation permit. Said permit shall be subject to all other provisions of this Chapter except that the provision in subsection (A) of Section 10-15.1-5 of this Chapter shall not apply.

- (C) A person who desires to provide childcare for gain for unrelated persons and for eight (8) or more persons at a time shall apply for a special use permit as provided for in other provisions of the this code and shall not be eligible for a home occupation permit.
- (D) For purposes of this section all terms that are used herein which are defined in the child care act of 1969 shall have the same meaning as defined in said act. Any permit(s) required by the child care act of 1969 shall be acquired before the issuance of any permit pursuant to this chapter. (Ord. 1115-A, 8-19-1986)

10-15.1-14: **SEVERABILITY CLAUSE:** If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this chapter, or any part thereof, or application thereof to any person, firm, corporation, public agency, or circumstance, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. It is hereby declared to be the legislative intent of the board of trustees that this chapter would have been adopted had such unconstitutional or invalid provision, clause, sentence, paragraph, section, or part thereof not then been included. (Ord. 1115-A, 8-19-1986)