



MEMORANDUM

TO: Mayor Jones and Members of the Board

FROM: Karen Proctor, Town Administrator

DATE: May 20, 2021

RE: Ordinance 2021-04 Amending Chapter 16 of the Foxfield Municipal Code Concerning Home Occupations

DISCUSSION:

Ordinance 2021-04 amends Chapter 16 of the Foxfield Municipal Code concerning home occupations.

The Board received some comments and concerns from residents regarding the Ordinance changes. Below is a summary of the response to these comments and concerns from Town Attorney Hoffman.

Legally, the issues raised “appear to relate in a general sense to Building Code compliance. The Town is not obligated to affirmatively require inspections or permits for the use of an accessory structure for a home occupation.”

“There are a number of possibilities depending more on policy considerations than legal one. From a legal perspective, the Town’s allowing a home occupation with employees in an accessory structure does not translate into the Town allowing an illegal use if the accessory structure is not adequate under the building code. Thus, there is technically no legal liability to the Town because the Town is immune under the Colorado Governmental Immunity Act. However, this is an area the Town could choose to regulate.”

Following are several suggested options:

1. Leave the Ordinance as amended to allow home occupations in an accessory structure and up to two (2) employees. Again, there is no legal liability to the Town, but it does suggest a potential invitation to use property in a manner not consistent with applicable building codes;
2. Require registration (not licensure) of home occupations that include employees and utilization of an accessory structure, and include insurance provisions and inspections to assure building/fire code compliance; or

3. Place a provision in the existing ordinance that simply says something like the following: “Nothing in this Section 16-4-10 shall be construed as authorizing a home occupation use in any structure that is not authorized under applicable building and fire codes.”

Based on this information, and the examples from other jurisdictions, Staff recommends that the Town allow home occupations in an accessory structure and only allow one (1) employee as the code currently states. In addition, the provision suggested by Town Attorney Hoffman listed as #3 above should be added to the Ordinance.

Staff suggests that the Board take public comments this evening and continue the public hearing to June 3, 2021.

EXAMPLES OF OTHER JURISDICTIONS CODE RELATED TO HOME OCCUPATIONS

City of Centennial:

Operations must be conducted entirely within the main residence.
There may be up to one employee who does not live at the residence.

City of Lone Tree:

A home occupation shall be allowed as a permitted use, in residential or agricultural districts, provided that:

- (1) Such use shall be conducted only within the principal dwelling. No detached accessory structures shall be allowed.
- (2) Such use shall be conducted only by the occupants thereof plus not more than one (1) nonresident employee.

City of Golden:

It shall be unlawful to operate a home occupation in violation of any of the following restrictions:

- (3) The home occupation shall be conducted by the person or persons resident in the dwelling unit, may include no more than one nonresident employee, and shall not attract additional employees directly to the dwelling unit containing the home occupation.
- (5) The home occupation shall be conducted wholly within an enclosed building.

City of Cherry Hills Village:

Standards. A home occupation may be operated only if it complies with all of the following conditions:

- (1) The home occupation is operated in its entirety within an enclosed building on a lot that is used for a single-family dwelling unit, and only by the residents of the dwelling unit.
- (9) The home occupation does not have any employees or regular assistants who work on the subject property and who do not reside on the subject property.

City of Littleton:

A "home occupation" is any business or service of limited scope, conducted entirely within a dwelling and carried out solely by its residents.

City of Aurora:

Home occupation means any use that meets the following requirements:

1. The residents of the dwelling unit shall be the only people engaged in the activity;
2. The activity is carried on only in the principal building and is incidental and secondary to the primary purpose served by the dwelling;

Arapahoe County:

The home occupation must be conducted entirely within the principal dwelling structure. Not more than twenty percent (20%) of the garage area shall be used for storage of permitted materials and goods associated with the home occupation. The home occupation shall be conducted only by the residents of the principal dwelling.

ATTACHMENT:

Exhibit A: Ordinance 2021-04 Amending Chapter 16 of the Foxfield Municipal Code Concerning Home Occupations

Trustee Bill No. 04
Series of 2021
Town of Foxfield

Introduced by

A BILL FOR AN ORDINANCE AMENDING CHAPTER 16 OF THE FOXFIELD MUNICIPAL CODE CONCERNING OFF STREET PARKING STANDARDS AND HOME OCCUPATIONS

WHEREAS, the Board of Trustees desires to amend certain provisions of Chapter 16 of the Town of Foxfield Municipal Code concerning off street parking standards and home occupations;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF FOXFIELD, COLORADO:

Section 1. Section. 16-3-30 (j)(4) of the Foxfield Municipal Code is hereby ~~deleted in its entirety; amended to read as follows:~~

~~Sec. 16-3-30. Off Street Parking Standards.~~

~~————(j) (4) Parking or storing of commercial or industrial vehicles. All commercial or industrial vehicles must be parked in a fully enclosed facility after business hours. Parking or storing of commercial vehicles in residential zone districts is prohibited, except that one (1) vehicle used in the operation of a business by an owner and/or occupant of the property is permitted in accordance with Article 4 of this Chapter regarding home occupations.~~

Section 2. Section. 16-4-10 (3) of the Foxfield Municipal Code is hereby amended to read as follows and 16-4-10 (c) has been added:

Sec. 16-4-10. Home occupations.

(3) The home occupation business shall be conducted by the persons residing in the home and up to ~~two~~ one (1) additional employees.

(c) Nothing in this Section 16-4-10 shall be construed as authorizing a home occupation use in any structure that is not authorized under applicable building and fire codes.

Section 3. The definition of “Home occupation” in Section 16-6-10 of the Foxfield Municipal Code is hereby amended to read as follows:

Home occupation. Any occupation or activity which is clearly incidental to and conducted wholly within a dwelling unit or in an accessory building on the premises by residents of the dwelling unit as more particularly described in Section 16-4-10 of the Foxfield Municipal Code.

Section 4. The Town Board of Trustees hereby finds, determines, and declares that this ordinance is promulgated under the general police powers of the Town of Foxfield, that it is promulgated for the health, safety, and welfare of the public, and that this ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Trustees further determines that the ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 5. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 6. This ordinance shall become effective thirty (30) days after final publication.

Adopted as Ordinance No. 04 Series of 2021, by the Board of Trustees of Foxfield, Colorado, and signed and approved by its Mayor or presiding officers this _____ day of _____, 2021.

Lisa Jones, Mayor

ATTEST:

Miranda Gallivan, Town Clerk

Town Seal

Corey Y. Hoffmann, Town Attorney
(Approved as to Form)