

# Memorandum

## Department of Planning



**To:** Planning and Public Works Committee  
**From:** Mike Knight, Assistant City Planner *JMK*  
**Date:** November 10, 2022

**RE:** **P.Z. 10-2022 City of Chesterfield (Unified Development Code – Article 4)**: An ordinance amending Article 4 of the Unified Development Code to revise regulations pertaining to Home Occupations.

### **Summary**

The Unified Development Code (UDC) was approved and adopted by the City of Chesterfield City Council in June of 2014. The purpose of the UDC is to promote public health, safety and general welfare, while recognizing the rights of real property owners and providing administrative procedures and development standards. The purpose of this petition is to potentially revise the regulations of the UDC pertaining to Home Occupations.

HB 1662 was adopted by the 101st General Assembly of the State of Missouri to amend the jurisdiction of municipalities in establishing regulations for home-based businesses. Article 04 of the City of Chesterfield UDC defines specific regulations for Home Occupations. Article 04 of the City's UDC is in conflict with the new regulations of the State.

A Public Hearing was held on October 24<sup>th</sup>, 2022. At that meeting, City staff discussed possible conflicts with the City's Unified Development Code as they relate to Home Occupations, and identified potential resolutions to abate conflict through P.Z. 10-2022. The Planning Commission made a motion to approve P.Z. 10-2022 as submitted. The motion passed by a vote of (8-0).

In summary, there are three areas of the UDC that require update to abate conflict with state statute. The first update is to remove the requirement to permit or license a Home Occupation. This is no longer an authority permissible by the City according to State Statute. Second is to remove the development criteria (Table 1 of Section 405.04.140) in its entirety as they are not regulations expressly limited to the business having "no-impact", which is a requirement of State Statute. Finally to adjust the definition of a Home Occupation in the City's Unified Development Code to match the definition created in State Statute. Not only is this a best practice, but also the current definition is in conflict with State Statute.

Attached is the October 24<sup>th</sup> Planning Commission Report that further describes the update to State Statute and the current language of the City's Unified Development Code.

### **Companion Bill**

Although the City of Chesterfield Planning Commission solely reviews updates to the Unified Development Code, it should be noted that a Companion Bill is also being introduced to City Council and on the November 10<sup>th</sup> Planning and Public Works agenda for recommendation. This Companion Bill proposes an ordinance creating Chapter 625 of the Municipal Code pertaining to Home Occupations.

The Missouri Revised State Statutes states:

*“A political subdivision shall not prohibit the operation of a no-impact, home-based business or otherwise require a person to apply for, register for, or obtain any permit, license, variance, or other type of prior approval from the political subdivision to operate a no-impact, home-based business.”*

Statute then further describes what qualifies as a no impact, home-based business. The Companion Bill introduces items such as, but not limited to, the qualifications that make a “no-impact” home occupation, process for a potential violation of the “no-impact” regulations, and the appellate process after a decision is made.

Attached to this memo is the October 24<sup>th</sup> Planning Commission report and the draft ordinance to the City’s Unified Development Code.

Attachments: October 24, 2022 Planning Commission Report  
Draft Ordinance (Unified Development Code)



# IV.A & VIII.A

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## Public Hearing and Vote Report

**Meeting Date:** October 24, 2022

**From:** Mike Knight, Assistant City Planner

**Location:** City of Chesterfield

**Description:** **P.Z. 10-2022 City of Chesterfield (Unified Development Code – Article 4)**: An ordinance amending Article 4 of the Unified Development Code to revise regulations pertaining to Home Occupations.

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### **SUMMARY**

The Unified Development Code (UDC) was approved and adopted by the City of Chesterfield City Council in June of 2014. The purpose of the UDC is to promote public health, safety and general welfare, while recognizing the rights of real property owners and providing administrative procedures and development standards. The purpose of this petition is to potentially revise the regulations of the UDC pertaining to Home Occupation regulations.

HB 1662 was adopted by the 101<sup>st</sup> General Assembly of the State of Missouri to amend the jurisdiction of municipalities in establishing regulations for home-based businesses. Article 04 of the City of Chesterfield UDC defines specific regulations for Home Occupations. Article 04 of the City's UDC is in potential conflict with the new regulations of the State. This report outlines potential conflicts with the City's Municipal Code and offers proposed amendments to remedy the potential conflicts.

The following report is structured by first articulating the updates to Missouri Law, identifying the existing language in City Code, followed by the proposed action to abate potential conflicts.

## **UPDATES TO MISSOURI LAW**

The laws in the Missouri Revised Statutes are passed by the Missouri General Assembly, which consists of the Missouri House of Representatives and the Missouri Senate. HB 1662 was signed by the Governor, which became law effective August 28, 2022.

There are two updates to the Missouri Revised Statutes (Chapters 89.500 and 71.990) that relate to the City of Chesterfield. These updates are defined in the Revised State Statutes as Home-based work and Home-based business, which is commonly referred to as Home Occupation in City of Chesterfield Ordinance.

### **Chapter 89.500**

Below is the new *language* included in Chapter 89 (Zoning and Planning) of the Missouri Revised Statutes.

#### ***Home-based work — limitation on zoning restrictions. —***

1. *As used in this section, the term "home-based work" means any lawful occupation performed by a resident within a residential home or accessory structure, which is clearly incidental and secondary to the use of the dwelling unit for residential purposes and does not change the residential character of the residential building or adversely affect the character of the surrounding neighborhood.*
2. *A zoning ordinance or regulation adopted pursuant to this chapter that regulates home-based work shall not:*
  - 1) *Prohibit mail order or telephone sales for home-based work;*
  - 2) *Prohibit service by appointment within the home or accessory structure;*
  - 3) *Prohibit or require structural modifications to the home or accessory structure;*
  - 4) *Restrict the hours of operation for home-based work; or*
  - 5) *Restrict storage or the use of equipment that does not produce effects outside the home or accessory structure.*
3. *A zoning ordinance or regulation adopted pursuant to this chapter that regulates home-based work shall not contain provisions that explicitly restrict or prohibit a particular occupation.*

4. *The application of this section does not supersede any deed restriction, covenant, or agreement restricting the use of land nor any master deed, by law or other document applicable to a common interest ownership community.*

### **Chapter 71.990**

Below is the new *language* included in Chapter 71 (Provisions Relative to All Cities and Towns) of the Missouri Revised Statutes.

### ***Home-based business, use of residential dwelling — limitations on restrictions by political subdivisions — reasonable regulations permitted.***

1. *As used in this section, the following terms mean:*
  - 1) *"Goods", any merchandise, equipment, products, supplies, or materials;*
  - 2) *"Home-based business", any business operated in a residential dwelling that manufactures, provides, or sells goods or services and that is owned and operated by the owner or tenant of the residential dwelling.*
2. *Any person who resides in a residential dwelling may use the residential dwelling for a home-based business unless such use is restricted by:*
  - 1) *Any deed restriction, covenant, or agreement restricting the use of land; or*
  - 2) *Any master deed, bylaw, or other document applicable to a common-interest ownership community.*
3. *Except as prescribed under subsection 4 of this section, a political subdivision shall not prohibit the operation of a no-impact, home-based business or otherwise require a person to apply for, register for, or obtain any permit, license, variance, or other type of prior approval from the political subdivision to operate a no-impact, home-based business. For the purposes of this section, a home-based business qualifies as a no impact, home-based business if:*
  - 1) *The total number of employees and clients onsite at one time does not exceed the occupancy limit for the residential dwelling; and*
  - 2) *The activities of the business:*
    - a) *Are limited to the sale of lawful goods and services;*
    - b) *May involve having more than one client on the property at one time;*
    - c) *Do not cause a substantial increase in traffic through the residential area;*

- d) Do not violate any parking regulations established by the political subdivision;*
  - e) Occur inside the residential dwelling or in the yard of the residential dwelling;*
  - f) Are not visible from the street; and*
  - g) Do not violate any narrowly tailored regulation established under subsection 4 of this section.*
- 4. A political subdivision may establish reasonable regulations on a home-based business if the regulations are narrowly tailored for the purpose of:*
- 1) Protecting the public health and safety, including regulations related to fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste, pollution, and noise control; or*
  - 2) Ensuring that the business activity is compliant with state and federal law and paying applicable taxes.*
- 5. No political subdivision shall require a person, as a condition of operating a home-based business, to:*
- 1) Rezone the property for commercial use;*
  - 2) Obtain a home-based business license; or*
  - 3) Install or equip fire sprinklers in a single-family detached residential dwelling or any residential dwelling with no more than two dwelling units.*
- 6. Whether a regulation complies with this section is a judicial question.*

**UDC 405.04.140.18**

The City’s Unified Development Code currently has regulations that are potential conflicts with the aforementioned State Statutes. The UDC states that both a business license and a home occupation permit shall be required for a home occupation. The UDC also has defined Development Criteria that a home occupation shall adhere too.

<b>Table 1: Development Criteria</b>	
<b>Performance Standards</b>	<b>Criteria</b>
<b>General:</b>	
Purpose	Home occupation activity shall be clearly subordinate to the residential use of the property.
Use limitation	The home occupation has no retail sales (except for goods and services produced on the premises).
Prohibited uses	Animal hospital; kennel or dog sitting service of more than 5 dogs at a time, not including dogs owned by the homeowner; clinic and hospital; vehicle repair; outside storage of equipment, material or supplies; restaurant; medical or dental practice, excluding counseling services, which require patients to receive services in the home.
<b>Structure:</b>	
Performance standard of structure	Any noise, vibration, smoke, odors, heat or glare produced as a result of the home occupation which would exceed that normally produced by a single residence shall be prohibited.
Use of structure	The home occupation shall occupy no more than 25% of the residence, including the basement and attached garage. Use of existing outbuildings for the home occupation is permitted and not considered in the allowable square footage.
Alteration of structure	The residential structure which accommodates the home occupation shall maintain its character as a dwelling. Alteration of the structure for handicap access shall be permitted.
Exterior of structure	The home occupation shall maintain its residential character of the premises by not having any exterior storage of materials or any other indication of a home occupation.
Signage	In order to maintain its residential character, signage of any kind located on the exterior of the property or visible from the property shall be prohibited.

<b>Parking:</b>	
Standard	Parking shall not cause a burden on the immediate property or to the neighborhood.
Alteration of parking on the property	Exterior expansion of the parking for the residential use of the property only shall be permitted.
Location	All parking for the home occupation must occur on site.
Commercial vehicles	1 commercial vehicle, which is also used by the resident, may be parked at the residence within any 24-hour period.
<b>Patrons:</b>	
Patrons, students, or business callers on site.	A maximum of 2 patrons, students, or business callers of any kind may be on the premises at any given time.
	For child-care centers, a maximum of 5 children, not related to the provider, shall be permitted.
<b>Hours:</b>	
Maximum hours of operation	Patrons, students, or business callers shall only be received within the hours of 7:00 A.M. and 9:00 P.M.
Hours for deliveries	All deliveries related to the home occupation shall be made between the hours of 7:00 A.M. and 9:00 P.M.
<b>Employees:</b>	
Employee requirement	All employees shall be residents of the home.

**PROPOSED ACTION**

City staff has reviewed the updates to Missouri Law as they pertain to Home Occupations and consulted with the City’s Attorney for any potential conflicts within the City’s Municipal Code. After review, City Staff proposes removing subsection 18 and Table 1 of Section 405.04.140 in their entirety from the City of Chesterfield Municipal Code. The requirement to permit or license a Home Occupation is no longer an authority permissible by the City and the regulations by development criteria are not specifically tailored to a business that qualifies as a no impact, home-based business which is now a requirement by statute.

An update to the Home Occupation use term in Section 405.10.030 is also proposed (*below*) to align with the definition in Chapter 89 of the Missouri Revised Statutes.

*“Any lawful occupation performed by a resident within a residential home or accessory structure, which is clearly incidental and secondary to the use of the dwelling unit for residential purposes and does not change the residential character of the residential building or adversely affect the character of the surrounding neighborhood.”*



## **COMPANION BILL**

Although the City of Chesterfield Planning Commission solely reviews updates to the Unified Development Code, it should be noted that a Companion Bill is also being introduced to the City. This Companion Bill proposes an ordinance creating Chapter 625 of the Municipal Code pertaining to Home Occupations.

The Companion Bill includes items such as, but not limited to, the qualifications that make a “no-impact” home occupation, process for a potential violation of the “no-impact” regulations, and the appellate process after a decision is made. Attached to this document is the Companion Bill in its entirety creating Chapter 625 of the City of Chesterfield Municipal Code.

## **NEXT STEPS**

The changes herein are recommended by Staff in order to effectively administer the UDC as originally intended. A Public Hearing is an opportunity for Staff to communicate the updated Missouri Revised Statutes, current regulations on Home Occupations, give an opportunity for the public to provide input, and for the Planning Commission to review the current and potentially future regulations as they pertain to Home Occupations in the City’s Unified Development Code. Attached to this report, please find the Public Hearing Notice, Draft Ordinance Amending the City’s Unified Development Code, and Companion Bill creating Chapter 625 of the City’s Municipal Code.

**Staff is providing the ability for Planning Commission to vote on these amendments. If approved, the amendments move forward to the Planning and Public Works Committee.**

### Attachment

1. Public Hearing Notice
2. Draft Ordinance to the Unified Development Code
3. Draft Ordinance to Chapter 625 of the Municipal Code

**BILL NO.** \_\_\_\_\_

**ORDINANCE NO.** \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF CHESTERFIELD AMENDING SECTION 405.10.030 AND SECTION 405.04.140 OF THE MUNICIPAL CODE PERTAINING TO HOME OCCUPATION REGULATIONS**

**WHEREAS**, pursuant to Chapter 89 RSMo, the City of Chesterfield (the “City”) is authorized to establish zoning regulations for the City; and

**WHEREAS**, HB 1662 was adopted by the 101<sup>st</sup> General Assembly of the State of Missouri to amend, among other things, the jurisdiction of municipalities in establishing regulations for home-based business; and

**WHEREAS**, a Public Hearing was held before the Planning Commission on October 24, 2022; and,

**WHEREAS**, the Planning Commission recommends approval of the following amendments; and,

**WHEREAS**, the City Council of the City of Chesterfield desires to amend the Municipal Code to reflect the changes in regulation of home-based business to conform to state law; and

**WHEREAS**, there is a companion bill, Bill No. \_\_\_\_\_, being considered by the City for further changes to regulations for home occupations; and

**WHEREAS**, the City Council believes these regulations of home occupations are necessary to protect the health, safety, and welfare and ensure that home occupations are compliant with state and federal law, including the payment of applicable taxes.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, MISSOURI AS FOLLOWS:**

**Section 1:** The definition of home occupation found in Section 405.10.030 of the City of Chesterfield Municipal Code shall be repealed and replaced as follows:

Section 405.10.030 **Use Terms.**

**HOME OCCUPATION**

Any lawful occupation performed by a resident within a residential home or accessory structure, which is clearly incidental and secondary to the use of the dwelling unit for residential purposes and does not change the residential

character of the residential building or adversely affect the character of the surrounding neighborhood.

**Section 2:** Subsection 18 and Table 1 of Section 405.04.140 of the City of Chesterfield Municipal Code shall be deleted in their entirety.

**Section 3:** This ordinance shall be codified within the Municipal Code of the City of Chesterfield.

**Section 4:** This ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
PRESIDING OFFICER

\_\_\_\_\_  
Bob Nation, MAYOR

ATTEST:

\_\_\_\_\_  
Vickie McGownd, CITY CLERK

FIRST READING HELD: