

**MINUTES OF THE CITY OF HOLLADAY
PLANNING COMMISSION MEETING**

**Tuesday, January 9, 2024
6:00 p.m.
City Council Chambers
4580 South 2300 East
Holladay, Utah**

ATTENDANCE:

Planning Commission Members:

Dennis Roach, Chair
Ginger Vilchinsky
Paul Cunningham
Jill Fonte
Karianne Prince
Angela Gong
Brian Berndt

City Staff:

Carrie Marsh, City Planner
Brad Christopherson, City Attorney

**CONVENE REGULAR MEETING – Public Welcome and Opening Statement by
Commission Chair.**

Chair Dennis Roach called the Regular Meeting of the Holladay Planning Commission to order at approximately 6:01 p.m. He read the Commission Statement for the benefit of those present. It was determined that the Training Session will take place before the Action Item is discussed.

ACTION ITEMS

- 1. Text Amendment - Chapter 13.76.730; HOME OCCUPATIONS - Continued from 12/19/2023 Meeting. Review and Make a Recommendation to the City Council on Proposed Amendments to Title 13 of the Holladay City Code, Land Use and Development Regulations as they Relate to Home Occupations. Item Reviewed as a Legislative Action, According to Procedures Set Forth in Holladay Ordinance §13.07. File #23-4-08.**

City Planner, Carrie Marsh, presented the Staff Report and explained that the item relates to a proposed Text Amendment for Chapter 13.76.730 – Home Occupations. She reported that the item was continued during the Planning Commission Meeting held on December 19, 2023. There were some changes made to the language based on the direction received from the Planning Commission. Those changes are highlighted in the attachment included in the Meeting Materials Packet. She pointed out some changes made to the parking language. That now reads as follows:

- On-street parking may be approved by the Community and Economic Development Director under circumstances where on-site parking creates a safety issue or is in conflict with property access and use. On-street parking proposals may not exceed one vehicle space and must be located immediately in front of the residence or within 200 feet of the residence.

Chair Roach wondered whether there is a way to ask that parking occur on the same side of the street as the business to eliminate potential safety issues with crossing. City Attorney, Brad Christopherson believed that it was easy to request, but noted that it might be difficult to actually enforce. Commissioner Paul Cunningham pointed out that there aren't those kinds of restrictions placed on people holding a church meeting or something similar. It seems that there is a desire to place more restrictions on Home Occupations than other residential uses. If a Home Occupation is a permitted residential use, he does not understand the desire to treat it differently. Parking plans make sense to him, but something like jaywalking on a cul-de-sac seems difficult to enforce.

Ms. Marsh explained that when applications are reviewed, it is possible to look at where the parking is proposed and make suggestions. For example, the City can ask an applicant to encourage visitors to park on the same side of the street for safety. However, outlining that in that code might be too restrictive. She reiterated that enforcement would be difficult as well.

Commissioner Angela Gong discussed public notices. She understood the desire to increase privacy and streamline the process but also wanted to make sure it was possible to receive input from neighbors. Ms. Marsh reported that there are often calls from neighbors about parking issues. A lot of times, residents are informed that streets are public rights-of-way and parking is not regulated on the streets beyond vehicles that are parked there for more than 24 hours at a time or during a snow storm. There would be the same kind of process for a Home Occupation. Residents would be informed of the Home Occupation standards. If it is found there is an operation outside of those standards, a resident can inform the City and the enforcement process can begin.

Ms. Marsh reported that on the GIS portal, there is an interactive map for Holladay Business License locations. Locations with a Business License are shown on the map. It is possible to see where businesses are operating in the City. A resident can also submit a Records Request for a Business License as well. Commissioner Gong asked if there is a threshold where a Business License is not needed. Ms. Marsh explained that any time clients are coming to the house for business purposes, a Conditional Use Permit is needed. If there are no clients coming to the house, there is no requirement to have a Business License, but some people still choose to have a Business License. Chair Roach asked about people who sell items on Facebook Marketplace. Ms. Marsh clarified that if people are coming to pick up items that are being sold as part of a business, there needs to be a Home Occupation. She informed the Commission that one-yard sale per year is permitted.

Commissioner Gong noted that there are many residents who want to do things legally. She wanted to know if it is possible to have a threshold written into the code. For example, if the use occurs once a month, a Business License is not needed. Commissioner Cunningham explained that wherever the line was drawn, those in violation will claim they are under the line. It is easier to have clear limits in place. Commissioner Ginger Vilchinsky asked if it is possible to regulate the number of people that can come in and out of a home-based business. Ms. Marsh explained that based on the hours of operation, it is possible for City Staff to determine whether something is beyond normal use. Commissioner Vilchinsky shared an example of a situation on her street. Discussions were had about appropriate hours of operation and the need for the primary use to be residential. Mr. Christopherson stated that an argument could be made about the primary use.

Ms. Marsh read from 13.76.730 – Home Occupations, which stated: “...ensure that the Home Occupations are compatible with the zone in which they are located, having no negative impacts on the surrounding neighborhood. Home Occupations are intended to promote local and sustainable economic growth and development.” It also stated that no Home Occupation license shall be required for businesses that: “Do not have combined off-site impacts of the home-based business and the primary residential use that exceed the impact of the residential use alone.” Commissioner Paul Cunningham noted that language in that section stated, “...having no negative impacts on the surrounding neighborhood,” which is an impossible standard, as there are always impacts. He suggested removing that language and relying on the A(3) language instead. Ms. Marsh believed that instead of the reference to “no negative impacts,” it could state that it “ensures primary residential use” or that “Home Occupations are an accessory use.” There was support for that. Chair Roach suggested the language, “having minimal to no negative impacts,” instead. Alternatively, the word “reasonable” could be used and that word could be defined for more clarity.

Commissioner Cunningham asked about the hours of operation. He wanted to know if the hours of operation proposed when the Business License is granted become what is permitted. Mr. Christopherson explained that if it is a Conditional Use and the hours of operation are listed as a condition, then those are the hours of operation. If it is a Business License and not a Conditional Use, then that is not accurate. Commissioner Karianne Prince wanted to know if there is a way to determine whether something is a home-based business when obtaining a Business License. Mr. Christopherson explained that City Staff looks at the applicant's address. Ms. Marsh explained that if it is a home-based business, there is a different set of standards that need to be considered.

Commissioner Jill Fonte wanted to know if the Planning Commission has the purview to protect people from disruptive home-based businesses. Ms. Marsh explained that the example scenario previously shared by Commissioner Vilchinsky is likely operating outside of the standards. Discussions were had about that particular situation and the code enforcement process.

Commissioner Gong asked for additional details about code enforcement. She wanted to know if a license could be revoked or if mitigation is the focus. Ms. Marsh reported that a notice of violation can be issued. The terms of that notice state there needs to be code compliance. She shared information about the application and review process. Commissioner Gong read the following language from 13.76.730 – Home Occupations. It was from lines 132, 133, and 134:

- If additional Home Occupations are being conducted within ¼ mile at the time of application, additional conditions to mitigate increased traffic or other potential impacts in the area may be applied by the Community and Economic Development Director.

Commissioner Gong asked for clarification about the language. Ms. Marsh explained that it would apply only to new applications. If someone is applying for a Home Occupation and there is already one existing within a quarter mile, the existing Home Occupation will be considered. Some additional conditions may be created if that is deemed necessary and appropriate. Commissioner Gong wanted to know if this disadvantages people who are applying later. Ms. Marsh confirmed this. She clarified that additional conditions would only be created to offset some of the impacts.

Commissioner Cunningham asked to review the Home Occupations Prohibited list. He suggested adding animal breeding. The breeding of any kind of animal as a Home Occupation is something he feels would be problematic. Ms. Marsh reported that a lot of that is addressed in the Allowed Uses table. The prohibited uses were based on items that were not explicitly outlined in the table. As for the item related to welding shops or machine shops, Commissioner Cunningham thought that should be broader and include a reference to fabrication. Chair Roach asked whether 3D printers are considered fabrication. It was suggested that metal fabrication be referred to instead.

Commissioner Cunningham referenced the prohibition on tattoos and body art. He wondered why that particular item was on the list since hairstyling and other uses were permitted. Ms. Marsh explained that tattooing and body art is not allowed in Holladay at all. Permanent cosmetics are permitted, but tattoos and body art are not. Commissioner Fonte asked why tattooing is not permitted in Holladay. Ms. Marsh explained that it was decided by the Council not to be a permitted use. Commissioner Cunningham expressed concerns about home-based businesses operating until 10:00 p.m. He wondered whether it was possible to limit that to 9:00 p.m. Commissioner Fonte agreed and believed that 10:00 p.m. was too late to be operating a home-based business. Ms. Marsh confirmed that it is possible to adjust hours to 7:00 a.m. to 9:00 p.m.

Commissioner Cunningham referenced H(7) and read the following language aloud:

- Operations should not violate the Noise Ordinance as ordinances detailed in the City of Holladay Code Title 9, Chapter §9.48.

He thought that language was either duplicative of should say “shall,” otherwise, it was not really enforceable. Commissioner Cunningham explained that he is supportive of the proposed language in general because it is an improvement to what is currently in place. He believed the changes will make it easier for there to be compliance. Commissioner Brian Berndt expressed a desire to see the language be as specific as possible so there is no ambiguity. He expressed concerns about parking. It was noted that references made to the Noise Ordinance are there as a reminder.

Commissioner Prince asked about the inclusion of a savings clause. In that instance, if something was not listed, it was not allowed. Mr. Christopherson explained that the Planning Commission can ask the City Council to consider a savings clause. Commissioner Gong asked if it is possible to add language that states that something not listed must come before the Planning Commission. Ms. Marsh read the following statement: “Home Occupations that do not comply with the standards of this section shall apply for a Conditional Use Permit as per 13.08.040.” It is possible to amend that to state: “...do not comply or fall outside the scope of the ordinance...” Commissioner Cunningham did not want to complicate things as long as the intention was clear.

Commissioner Gong noted that a situation would have to be very problematic before she felt comfortable contacting code enforcement. She was also uncertain how to contact code enforcement. If it is becoming easier for people to have home-based businesses and there is less public input received, she felt it was important for the public to be able to share input without needing to fill out a report. Ms. Marsh reported that residents wishing to make a complaint are directed to the citizen request portion of the City website. She reminded Commissioners that a website redesign is currently underway. The intention is to make the information easily accessible.

Ms. Marsh stated that the information submitted is confidential and goes to the Code Enforcement Officer. There is no desire to create conflicts between neighbors. Discussions were had about GRAMA requests. Commissioner Gong asked what percentage of the complaints are reasonable. Ms. Marsh noted that a lot of the process is educational, but residents are encouraged to come to the City if there is an issue, because there is a desire to address problems within the community.

Commissioner Vilchinsky stressed the importance of the City working with the Business Licensing Department to educate residents. People starting businesses need to have the resources to know what is permitted and what is not permitted as well as how to legally start a business. She thought the City should focus on educating and assisting new business owners in the community. Additional discussions were had about education and the code enforcement options available.

Commissioner Prince moved to forward a recommendation to the City Council to APPROVE the application to amend 13.100 and 13.76.760 of the City of Holladay Land Use Code, to allow for Home Occupations to be permitted, with standards approved by Staff, based upon the following findings:

- 1. Compliance with the Purpose of the Land Development Code by promoting and facilitating the orderly growth and development within the City of Holladay.***
- 2. Compliance with the Goals and Policies of the General Plan by establishing appropriate development standards for all uses and zoning categories within the City of Holladay.***
- 3. The additions discussed during the Planning Commission Meeting.***

Commissioner Cunningham seconded the motion. Vote on Motion: Commissioner Vilchinsky-Aye; Commissioner Cunningham-Aye; Commissioner Fonte-Aye; Commissioner Prince-Aye; Commissioner Gong-Aye; Commissioner Berndt-Aye; Chair Roach-Aye. The motion passed unanimously.

TRAINING

2. Required Training Session Conducted by the City Attorney's Office.

Mr. Christopherson reported that training is required each year. This training will focus on general powers and duties. He reported that a land use regulation is a legislative decision enacted by ordinance, law, code, map, resolution, specification, fee, or rule that governs the use or development of land. It includes the adoption or amendment of a zoning map or the text of the zoning code. It does not include a land use decision of the legislative body acting as the Land Use Authority, even if the decision is expressed in a resolution or ordinance. It also does not include a temporary revision. He noted that normally the City Council handles land use regulations. The Planning Commission normally handles land use decisions, which are administrative decisions of a land use authority or appeal authority regarding a land use permit or a land use application.

Mr. Christopherson explained that there are land use regulations, land use decisions, and land use appeals. Appeals can go before a Hearing Officer or Board of Adjustment, depending on the city. One of the reasons a lot of cities have moved away from a Board of Adjustment is that those are

typically somewhat political and not as objective as desired. Most cities now have a Hearing Officer. He clarified that there is a Hearing Officer in Holladay to handle those types of appeals.

Mr. Christopherson reviewed the Land Use and Development Management Act (“LUDMA”) and explained that it is Title 10 Chapter 9. LUDMA grants authority to cities. Cities may adopt their own land use standards so long as those are consistent with Federal and State law. LUDMA mandates the creation of a Planning Commission and the establishment of Land Use and Appeal Authorities. As a city grows in population, more requirements need to be met. In general, LUDMA requires cities to respect private property rights. Cities are allowed to regulate private property. Once written and established, those rules are binding and need to be followed.

Chair Roach asked about the oversight there is from cities and the State when it comes to property rights. Mr. Christopherson clarified that the State does not get into land use decisions very often. He noted that some Land Use Authority is given to school districts. He shared additional information about school districts. For an unincorporated property, the County would be the Land Use Authority there. However, cities are the Land Use Authority for the property within their borders.

Historically, cities have had complete authority over anything within their borders, but in the last several years, there have been lobbying efforts to modify those rights based on the idea that there are not enough housing projects to meet the needs of those who cannot afford more expensive residences. There is a push from developers and builders for more uniformity across cities as well. If there is a land use ordinance that is written in a way where there are multiple interpretations, the applicant's interpretation will be accepted. It is important to have well-written and clear language.

Mr. Christopherson discussed a scenario where there is something relatively new that the code does not specifically prohibit. In that case, it would be permitted, which is something that can frustrate the Planning Commission and City Council. Commissioner Gong asked about that kind of situation. A lot of times, there seems to be debate about what it means to have an impact above normal residential use for a home-based business. Mr. Christopherson explained that this issue has slightly more nuance because there is a community standard of what normal residential use is. From a City Engineer standpoint, a typical single-family residential home will generate approximately six vehicle trips in and out per day. That number will depend on the number of people living in the home and the number of vehicles. When considering the impacts, the analysis is conducted during the Conditional Use Permit process. The question becomes whether reasonable conditions can be applied to mitigate any of the potential impacts to the area.

Mr. Christopherson shared a recent example of someone offering cello lessons and the parking difficulties. There were clear view considerations and sight lines to take into account. The City cannot impose a Condition of Approval that will create a safety issue. The Action Item on the current meeting agenda considers parking regulations and interactions with home-based businesses. He shared information about on-street parking and some issues there. Mr. Christopherson pointed out that since the COVID-19 pandemic, many people are working from home who did not before. This has resulted in more code enforcement complaints in cities. Since people are home more often, they are more aware of what is happening in the neighborhood.

Commissioner Gong believed there is a certain community standard. She wanted to know what would happen if the interpretation of an applicant does not fit that community standard. Mr. Christopherson explained that those types of scenarios can highlight places in the language where additional clarification is necessary. It is possible to make amendments when appropriate.

Commissioner Berndt believed the City needs to provide a means by which mitigation can occur. He shared an example situation where a restaurant wanted to have dining on the sidewalk. Additional parking would be required because the parking requirement is typically based on the interior space. With the increased size of the business, there needs to be an increase in the parking required for the use. Mr. Christopherson stated that the requirements need to be reasonably related to the impact that is being mitigated. For instance, addressing hours of operation and parking. Commissioner Berndt stated that the Planning Commission is fairly limited on Conditional Use Permits. Mr. Christopherson explained that something is permitted with reasonable conditions. Commissioner Berndt asked if there can be subjectivity with Conditional Use Permits. Mr. Christopherson stated that subjectivity is that the conditions are tied to what is being mitigated.

Commissioner Berndt wanted to know what the traffic generation standards for home-based businesses are based on. He wants to understand how the necessary amount of parking is determined. Mr. Christopherson clarified that most home-based businesses are limited to one employee. Commissioner Berndt asked at what point a use will generate too much traffic. Mr. Christopherson did not know a city that regulated home-based business traffic in that manner. A typical residential home generates six vehicle trips per day in and out. Commissioner Berndt did not believe there was a standard in place to determine how much parking was necessary for the use. As a result, it appeared that there was some subjectivity about that particular requirement.

Commissioner Berndt explained that he wants to understand how City Staff determines what requirements there are. He wondered if the parking requirements are based on the type of business. Mr. Christopherson stated that it is based on whether the use is permitted or not. Commissioner Fonte stated that it appeared to be a case-by-case basis. For example, whether the home is located on a corner, what area of the City the home is located in, and so on. She asked what would happen if someone wanted to run a daycare home-based business in a cul-de-sac with 30 feet of frontage. That would create a significant impact. Mr. Christopherson explained that it is possible to reasonably regulate the use. In that situation, there would likely need to be staggered drop-offs in order to limit the impacts to the cul-de-sac. There are many reasonable conditions to consider. Ms. Marsh explained that it is possible to make modifications to the code to address specific issues.

Discussions were had about removing Home Occupations from a Conditional Use. This eliminates the home-based business use being tied to the land and makes the Home Occupation non-transferrable and contingent upon having a current Business License. Commissioner Cunningham expressed his support for that approach and believed the process will be beneficial. Commissioner Prince wondered whether there is a savings clause for the Action Item listed on the meeting agenda. This was denied. Commissioner Cunningham noted that in that case, there would need to be an exhaustive list of what is permitted. He pointed out that it would be a lengthy process. Mr. Christopherson explained that a consequence of a savings clause is that if something was not on the list and there was a desire to allow that use, there needs to be a legislative change made.

Commissioner Berndt asked if there is a revocation clause if neighbors continue to complain about a business. Mr. Christopherson explained that if something is in violation of their conditions, there is a revocation process for a Business License. Most people want to be good neighbors, but if there is an issue with a home-based business not following the conditions, revocation is possible.

Commissioner Fonte asked about hours of operation. Currently, those are listed as 7:00 a.m. to 10:00 p.m. She wondered what would happen if there is a home-based business operating until 10:00 p.m. that proved to be disruptive to neighbors. She wanted to know if the City has the opportunity to revoke the Business License in that instance. Ms. Marsh explained that the 10:00 p.m. time was taken from the Noise Ordinance. She reported that the Noise Ordinance lists hours from 8:00 a.m. to 10:00 p.m. The earlier 7:00 a.m. time was based on the fact that sometimes there are lessons offered before school starts. It is highly unlikely that someone will actually be operating a home-based business from 7:00 a.m. to 10:00 p.m. Some people may only want to operate in the evenings and some may only want to operate the business in the mornings.

If there is a home-based business where someone has clients parking on the street every evening continuously, there might be calls from neighbors. Ms. Marsh explained that this would then be a code enforcement issue. Enforcement can be taken based on the parking standards, as all clients need to park either on-site or limit parking to one on-street parking space. Continuously having more parking than that in a neighborhood to accommodate the business needs would be an issue. It would be possible to have the Business License revoked due to operating outside of the standards. Chair Roach appreciated all of the discussions but asked that the training continue.

Commissioner Vilchinsky noted that there are different zones in the City. The zones are established to meet the City's goals and plans. Different zones are arranged to provide or allow for different services. She wondered why home-based businesses are permitted to be in residential zones. It might make more sense to allow home-based businesses in residential professional zones as opposed to strictly residential zones. Mr. Christopherson explained that cities often react to what residents are already doing. In the past, people had home-based businesses, and then cities started to regulate those home-based businesses. Since the uses are already occurring, the intention is to essentially regulate those uses. The idea is to monitor existing uses and focus on compliance.

Ms. Marsh reported that home-based businesses are an accessory use. The main use of the land has to be residential, but the City does allow for accessory uses to occur. Discussions were had about the history of home-based businesses in the City. Mr. Christopherson explained that there are different perspectives to consider when it comes to these uses. Cities are trying to respond appropriately. Ms. Marsh reiterated that there can be a primary use and an accessory use, but the primary use has to be residential. It is not possible to have the primary use be something else.

Mr. Christopherson continued to review the training presentation slides. He reported that the City Council enacts land use regulations. The Planning Commission cannot enact land use regulations but applies the land use regulations that the Council enacts. City Councils are required by State Law. The Council creates and amends zoning districts and designates general uses that are allowed in each zone. City Councils may also establish other restrictions. Mr. Christopherson explained that the City Council considers each land use regulation the Planning Commission recommends.

Mr. Christopherson shared information about the Land Use Authority. He reviewed the Conditional Use language, which stated, “A Conditional Use shall be approved if reasonable conditions are proposed or can be imposed to mitigate the reasonably anticipated detrimental effect of the proposed use in accordance with applicable standards set forth in this section.” By design, there is meant to be some flexibility. LUDMA specifically states that if something is not prohibited, it is permitted. This is because the Legislature has determined private property rights are important. Mr. Christopherson shared additional information about the appeal authority. He reminded Commissioners that it can be a Hearing Officer, Court Judge, or Board of Adjustment.

Commissioner Cunningham asked what would happen if a neighborhood wants to appeal a Site Plan that was approved by the Planning Commission. Mr. Christopherson explained that the appeal cannot go before the same body that approved the application. Holladay handles appeals through a Hearing Officer. Ms. Marsh asked if the public can appeal a Planning Commission decision or if it has to be the applicant requesting the appeal. It is her understanding that the applicant is entitled to appeal, but the general public is not. Mr. Christopherson offered to look into that further and report back to City Staff and the Planning Commission with that information.

An example scenario from Summit County was shared which related to a zone change request. Discussions were had about referendums. Commissioner Cunningham asked for a copy of the presentation slides. Ms. Marsh noted that there is a table that breaks down legislative versus administrative items. It was confirmed that she would forward the slides to the Commissioners.

ADJOURN

Chair Roach moved to ADJOURN the Planning Commission Meeting. The motion was not seconded. The motion passed with the unanimous consent of the Commission.

The Planning Commission Meeting adjourned at approximately 7:56 p.m.

I hereby certify that the foregoing represents a true, accurate, and complete record of the City of Holladay Planning Commission Meeting held Tuesday, January 9, 2024.

Teri Forbes

Teri Forbes, Minutes Secretary
T Forbes Group

Minutes Approved: March 19, 2024