

Home Occupations

Commercial pursuits within a residence are increasingly common but beg the question of how much is too much.

Dwellings and neighbourhoods have been continually evolving and at the same time, ideals around work-life balance also shifting. Despite a rapid rise in the proportion of “work from home” employment, this type of activity is typically innocuous, and generally accepted. Home occupations that extend beyond a simple office are to varying degrees acceptable, depending on their intensity and scope. It goes without saying that “location” is everything – as acceptable limits for a home occupation on an acreage will obviously be different than within an apartment building.

Home Occupation Context

Home occupations, or home-based businesses, are the use of a residential property for an occupation, trade, profession, service or craft carried on by an occupant of the dwelling. This includes contract work, selling catalogue products such as kitchen wares or spices, hair salons, e-commerce, or the office and storage component of a trade related business (electrical, plumbing, drywall, etc.). Home occupations can come in a variety of forms however they should be secondary to the principal residential use.

For centuries people have been selling their produce, self-made products, wares, or offering their skills from home in order to provide for their families. It was not until the industrial revolution that there was a large-scale need for people to leave their homes to conduct their work and earn wages in factories and offices. Despite the broad scale shift in how we work, not all have subscribed to the notion that work must take place outside of the home. With the advent of the digital revolution and the expansive growth of the digital economy, many continue to work from home either as a corporate employee (remote worker) or as entrepreneurs operating their own businesses.

For most municipalities and in the context of this discussion, a home occupation is a business which is owned and operated by a resident of the home, and not remote work. That is to say, working from home and home occupations are not the same for the purposes of this periodical. Although working from home on behalf of a corporation could constitute a home occupation if the municipality desires, it is not typically pursued. This periodical will examine the nuance of this development type and how it might fit into southern Alberta communities.

Legislative & Legal Framework

The Court of Appeal has examined decisions made on home occupations on several occasions. The question of when a home occupation is better suited as another defined use within the land use bylaw, and likely not allowable within a residential district, is most often the subject matter of the appeal. There are two cases in Alberta in recent years which juxtapose the topic.

In *Edmonton (City) v Edmonton (Subdivision and Development Appeal Board)*, 2017 ABCA 140, a permit to operate a trucking business, including administrative activities and the outdoor storage of semi-trailer trucks from a five-acre parcel on lands zoned Agriculture had been denied by the Development Authority, then subsequently approved by the Subdivision and Development Appeal Board (SDAB). The Court of Appeal found that the municipality's definition of Major Home Based Business did not permit outdoor business activities or storage, therefore the SDAB erred in issuing a permit for the use. Conversely, in *Fuhr v Parkland (County)*, 2018 ABCA 442 a permit to operate a trucking business that specializes in moving buildings on lands zoned Agricultural General was granted by the Development Authority and subsequently supported by the SDAB. The permit allows for the parking of eight trucks indoors and four trailers outdoors, washing of vehicles, and temporarily storing ten portable classrooms outdoors. In this case, the Court

Statistics Canada has reported that nearly one in four (24.3%) Canadians worked from home at the time of the 2021 Census and although the 2023 Spring Labour Force Survey has shown a slight decrease (down to 20.1% of workers) the number of people using their dwelling as their place of work is still nearly triple that of the 2016 Census which indicated only 7.4% of people worked from home. It is important to note 2021 was the first census period to occur following the onset of the COVID-19 pandemic while work from home protocols remained in place for many. Unfortunately, Statistics Canada does not differentiate between remote workers and entrepreneurs however these statistics reinforce the reality that working from home is becoming more prevalent even after the work place has generally returned to normal following the COVID-19 pandemic.

Source: Statscan 2021 Census and 2023 Labour Force Survey



Happy Pawz Grooming Claresholm

Source: Town of Claresholm

Municipal Government Act

640(2) A land use bylaw

(a) must divide the municipality into districts of the number and area the council considers appropriate;

(b) must, unless the district is designated as a direct control district pursuant to section 641, prescribe with respect to each district,

(i) the one or more uses of land or buildings that are permitted in the district, with or without conditions, or

(ii) the one or more uses of land or buildings that may be permitted in the district at the discretion of the development authority, with or without conditions, or both;

(c) must establish a method of making decisions on applications for development permits and issuing development permits for any development, including provision for

(i) the types of development permit that may be issued,

(ii) applying for a development permit,

(iii) processing an application for, or issuing, cancelling, suspending or refusing to issue, a development permit,

(iv) the conditions that are to be attached, or that the development authority may attach, to a development permit, either generally or with respect to a specific type of permit,

(v) how long any type of development permit remains in effect,

(vi) the discretion that the development authority may exercise with respect to development permits, and

(vii) any other matters necessary to regulate and control the issue of development permits that to the council appear necessary.

of Appeal found the municipality's definition of Home-Based Business Level 3 allowed for the parking of commercial vehicles and some industrial activity with some outside impacts therefore, the appeal was dismissed and the decision of the SDAB was upheld.

In the Parkland County case, the appellants argued that the decision of the Court in the Edmonton case set a precedent establishing that home-based businesses should occur entirely indoors. The Court disagreed, noting that the two definitions were materially different and each municipality and SDAB must apply their own legislative framework to the lands within their jurisdiction.

Section 640 of the *Municipal Government Act* (MGA) requires a municipality to have a land use bylaw for the purpose of dividing the municipality into districts and listing one or more uses of land or buildings that are permitted or discretionary uses within the district. It does not, however, stipulate what uses must be included in the bylaw or how a municipality must define certain uses. It is up to each municipality to characterize what a home occupation is and appropriately define what types of activities may or may not be acceptable. Certain home based uses such as day cares, group homes, bed and breakfasts and short-term rentals are often defined and governed separately to emphasize that they have different impacts on neighbourhoods.

Beyond land use, home occupations are often viewed by brick-and-mortar businesses as being on an unlevel playing field due to the cost savings of not having a separate location from their dwelling. Particularly, the lack of property taxes associated with the home occupation can be off-putting to the local brick-and-mortar business community. Section 297 of the MGA affords municipalities the opportunity to apply more than one assessment class to a property. Because assessment is not affected by zoning and focuses on the activities occurring on the site, municipalities are able to apply the commercial mill rate to the portions of the dwelling utilized for the home occupation. However, this can be difficult to do where the home occupation does not have a distinct and defined space separate from the remainder of the dwelling. For instance, a business selling baked goods made in the home kitchen will also utilize that same kitchen for the day to day needs of the household, making it difficult to tax the area used for business separately from the home. Whereas a personal training studio that is the sole use of a detached garage can more easily be assessed as a commercial space separate from the dwelling. Municipalities should seek further guidance from their Municipal Assessors on this topic.

Other mechanisms that may be applied to home based businesses including business license and development permit fees. Municipalities may set rates for home occupations as more expensive than those for other businesses in an effort to level out the playing field and account for the lack of property taxes being paid. As an example, for particular home occupations, the Town of Vulcan levies an additional monthly \$5 fee on the water rate as a condition of approval.

Benefits and Challenges

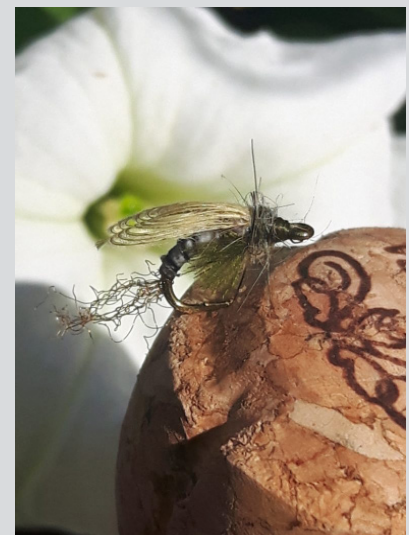
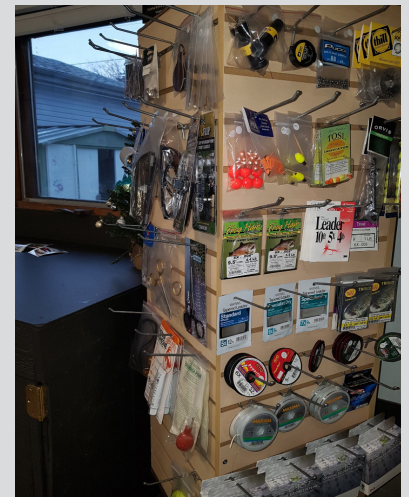
Municipalities experience both benefits and challenges from home occupations, including economic impacts. Home occupations provide services that may not otherwise be provided within the municipality or regional service area. For some there are barriers that make working outside of the home difficult, such as childcare access or affordability, the cost and time associated with commuting, or physical disabilities which can make participating in the workforce in a traditional way difficult. They allow more residents to participate in the workforce, which increases household incomes and money circulating in the local economy. Additionally, home occupations act as business incubators by providing an ability to grow a business in a low overhead environment during those crucial starting years. These businesses can enter traditional commercial or industrial space when financially viable. Without the ability to start as a home occupation, some businesses may never start or survive the first years of existence.

Conversely, home occupations in place of traditional brick and mortar locations can take away from efforts to focus development within the downtown or other commercial hubs, reducing the commercial tax base and leaving buildings to sit vacant. Further, the proximity to neighbours and the residential character of an area can make compatibility of some home occupations difficult depending on the context of the site and the proposed development (eg. auto repair businesses).

Enforcement of home occupations for compliance with the land use bylaw can be challenging due to their subordinate and sometimes inconspicuous nature. Without complaints or patrolling digital media, it may be difficult to identify where a home occupation is operating without approval. Without specific parameters around what is or is not acceptable, such as the number of client visits, it can be difficult for the Development Authority to make a clear determination, and they may feel influenced to approve a home occupation which is beyond the scope of what has been contemplated in the land use bylaw in order to protect economic interest of the applicant. A catering business may be an acceptable home occupation where the food is prepared on site and delivered to an off-site venue, but what happens when the home becomes the venue? If the land use bylaw does not clearly define the parameters in which non-resident visitors may come to the dwelling for business related activities, it may not be clear to the Development Authority if the scope for a home occupation has been exceeded.

Land Use Considerations

Many municipalities choose to define home occupations by categories, allowing for minor, less noticeable home occupations to be a permitted use and the less benign home occupations to be discretionary with each case being reviewed on its own merits. An accountant who does not have client visits will have far less impact to the neighbourhood than an in-home salon with multiple client visits a day. The salon will require consideration given to the parking of client vehicles while the accountant would have none. To apply the same parking requirements to both would be unfair and may hinder the



Garage workshop in Coalhurst

Source: MyFlyGuy.ca

In March 2020, the Municipal District of Pincher Creek was contacted by a neighbour regarding the use of the adjacent farmstead as an oilfield service business. Upon review of the matter, it was determined that there were no permits for the activity on the subject lands and the MD requested that the landowner submit a development permit application to bring the existing use into compliance.

Due to the nature of the development, the permit application was split into two separate permits. The first being for the home occupation portion and the second portion pertaining to the outdoor storage of 75 pieces of equipment.

The outdoor storage as a discretionary use was appealed. But because the Home Occupation was a permitted use it was not appealed and the Board claimed no jurisdiction over that permit. The Board considered the use size and scale of the outdoor storage and determined that, subject to the conditions of the approval, the site was suitable for the intended use of storage.

Subsequent to this decision the MD introduced a Rural Business district where similar applications would need rezoning.



accountant from obtaining approval.

When determining the intensity that is acceptable for home occupations within different home occupation categories and creating standards for each category, municipalities should take into consideration:

- Client parking
- Parking multiple business-related vehicles and trailers
- Outdoor storage of equipment and materials
- The volume of clients coming to the home on a daily basis
- Signage
- Hours of operation
- The number of non-resident employees
- Nuisance factors such as dust, odors, and noise.

Unlike other permits which when issued run with the land, home occupation permits should be specific to both the site and the resident. This is to ensure that the business cannot move to a new home with the resident, or a new resident could not move in and continue a home occupation without approval. Every home and neighbourhood will have their own characteristics that may or may not make the home occupation compatible.

To ensure home occupation standards are being met and permit conditions are being adhered to, some municipalities, including the Town of Claresholm and the Municipal District of Taber, only issue development permits for one-year whereupon the permit holder must apply for a renewal in order to continue the home occupation. At renewal, the Development Authority can consider feedback from neighbours and reevaluate compatibility with the neighbourhood. If it is determined it is not, the renewal can be denied.

In the rural context, neighbours remain farther apart therefore home occupations can be less discernible despite increasing in intensity. This allows rural municipalities the ability to afford residents with greater home occupation allowances where the property's size is conducive to do so. Lenient standards may increase the ability to park more business-related vehicles on the property, allow for more non-resident employees to attend the site, or permit outdoor storage of materials or equipment beyond what would normally be allowed within an urban setting.

Some municipalities have begun introducing new land use districts which allow for business undertakings in conjunction with residential development. This shift is embracing a live-work model by allowing uses that are typically considered too intense to be categorized as home occupations. For instance, the MD of Taber has put forth a new country residential land use district for consideration by Council. This district proposes to expand the scale of home occupations in conjunction with the principal dwelling by allowing other defined uses to be permitted within the district in conjunction with a residence. Their Rural Industrial Class C use is proposed to be a discretionary use and allow for things like manufacturing, warehousing, construction support services, and household repair services. If approved, the district will allow for greater flexibility in what types of businesses could be operated from an acreage setting. Similarly, Rocky View County has established the

Business Live-Work district to accommodate residential and light industrial or commercial activity on a single parcel. Uses such as care facilities, retail, automotive services, and event-based businesses like wedding venues can be contemplated within the district. The County requires the district to be adjacent to existing development that is commercial or industrial in nature in order to increase the compatibility of the Live-Work district with its surroundings.

In an urban setting, the City of Lethbridge has implemented the Urban Innovation land use district. The intent of the district is “to allow for comprehensive Development of a Site which may or may not feature a mixture of complementary land Uses to create an environment not possible using another land Use District in this Bylaw.” (City of Lethbridge, Land Use Bylaw 6300). This provides for the development of dwellings with commercial units that blend into the fabric of a residential neighbourhood. Similarly, the Town of Nobleford introduced the Cottage Industry Residential district in 2010 with the idea that the district could be a transition zone from industrial uses to residential. The district promotes residential development with opportunity for compatible commercial development within a residence on large (8712 sqft.) residential lots. Despite its creation, there have been no applications to rezone which may be related to the number of available commercial and industrial lots.

By accepting the live-work lifestyle into the municipality, these land use districts create a new model within their communities where commercial or light industrial undertakings are accepted in a district intended for residential development. By using a specific land use district, the municipalities seek to ensure that there is an awareness of the possible uses that may occur within the district and a buy-in from landowners who are accepting of the live-work lifestyle. These approaches likely require a land use bylaw amendment to become eligible which would shift neighbor concerns to Council during the public hearing process. Unlike traditional home occupations, these approvals may run with the land, allowing both the residential and business-related use to continue in that location, regardless of owner.

Concluding Remarks

Each municipality can determine what they consider a home occupation and how intense it can be before it is no longer subordinate to the residential use of the property and therefore beyond the scope of a home occupation. Accordingly, municipalities should be prepared to contemplate the increasing pressure to expand the scope of what a home occupation is. Whether there is interest to expand opportunities for home occupations or to stick to the status quo, it is vital that the definitions and standards for home occupation types clearly define what should or should not be permissible. The addition of a new land use district to confine the increasing intensity of home occupations to certain areas may also be contemplated.

Concept for the development of townhomes with commercial spaces on the main floor and a two-story dwelling unit above which blends the separation of uses normally found in mixed use developments with the low to medium density residential character typical of home occupations.



Source: <https://www.kurtishawkins.com/prestwick-townhomes/>

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