



# City of Muscatine

ITEM NUMBER 2023-0390

## AGENDA ITEM SUMMARY

DATE: 9/7/2023

### STAFF

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Andrew Fangman, Assistant Community Development Director

### SUBJECT

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Third and Final Reading of an Ordinance Amending Title 10, Chapter 20, Section 4 of City Code - Home Occupations

### EXECUTIVE SUMMARY

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Presented for City Council's consideration is the third and final reading of an Ordinance Amending Title 10, Chapter 20, Section 4 of City Code - Home Occupations. Home occupations are regulated by Section 10-20-4 of the City Code, which was adopted in 2018. However, State legislation passed in June 2022 restricts how cities in Iowa can regulate home occupations. As a result, the City Attorney has identified a number of provisions in the City Code that are noncompliant with state law. This ordinance will remove the noncompliant section from the City Code.

### STAFF RECOMMENDATION

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On July 11, 2023, The Planning and Zoning Commission voted 6-1 to recommend approval of the attached ordinance. Staff concurs with this recommendation.

### BACKGROUND/DISCUSSION

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Home occupations are regulated by Section 4, Chapter 20 of Title 10 of City Code. "Home occupations" as defined by City Code are, "an occupation or business activity which results in a product or service and is conducted in whole or in part in a dwelling unit, and is subordinate to the residential use of the dwelling unit". The intent of these regulations is to allow for home-based business activities that are not otherwise permitted in residentially zoned districts, but which are clearly subordinate and compatible with the surrounding residential land uses and which will not negatively impact the character of the residential area.

Home occupations can be very beneficial to the community when governed by zoning regulations, which permit as broad of an array of home occupations as possible without negatively impacting the surrounding neighborhood. Home occupations are an important part of any local economy and a critical component of allowing the local economy to grow through the entrepreneurial activities of its residents. These regulations foster the establishment of

new businesses by eliminating the need for some small businesses to rent commercial space, a factor which could make all the difference to a new business. Allowing for work at home can save commuting and child care costs, and can give those who might be unable to work outside of the home, including single parents, the elderly and the disabled, an opportunity to earn a living. However, any benefits of home occupations must be balanced with neighbors' rights not to be disturbed by excessive noise, odors, traffic and other nuisances that are not characteristic of a residential area.

Existing home occupation regulations that are contained within Section 10-20-4 of City Code were adopted in 2018. This code change was a shift from a very restrictive approach towards regulating home occupations, to one that is based on performance-based standards. This approach keeps the burdens on home occupations as light as possible by focusing only on activities that may disrupt neighbors. Performance standards can prevent harm to neighbors by prohibiting excessive noise, odors, traffic and other nuisances that are unwelcome in residential neighborhoods. This approach also better protects neighbors and preserves the residential character of residentially zoned areas by creating very specific and easy to enforce regulations on potentially disruptive activities. Current regulations are divided into eight topical subsections which address the following:

Regulations that establish a home occupation as an accessory use only

A list of prohibited activities, equipment, and materials

Regulations, which as much as possible, prohibit any visible exterior evidence of home occupation

Regulations regarding vehicles, parking, and traffic

Regulations regarding on-site customers, clients, or patrons

Regulations regarding delivery or pick-up of items

Regulations regarding employees

Regulations regarding hours of operation

In June 2022, legislation restricting the manner in which cities in Iowa can regulate home occupations was approved. The intent of the legislation was similar to the City's 2018 change to home occupation regulations, to remove the regulatory burden from home occupations that are not impacting their neighbors. However, this state legislation went further than the City's code change, in removing regulations and restrictions on home occupancy. Full text of state code governing how cities can regulate home based businesses can be found at the following link: <https://www.legis.iowa.gov/docs/ico/chapter/414.33.pdf>

As a result, a number of provisions of the City's home occupation regulations are no longer compliant with state law, and are not enforceable. The following currently adopted provisions of the home occupation regulations contained within City Code have been identified by the City Attorney as noncompliant with state law.

The requirement that not more than 500 square feet or 25 percent of the dwelling unit floor area, whichever is greater, be used to conduct the home occupation. 10-20-4(B)(1)(b)

The prohibition of tattooing and body piercing as a home occupation. 10-20-4(B)(2)(j)

The prohibition of kenneling or other forms of boarding animals for compensation as a home occupation. 10-20-4(B)(2)(k)

The requirement that a home occupation be conducted entirely within the main dwelling. 10-20-4(B)(3)(a)

The rule that not more than two vehicles, externally identifiable as being associated with the home occupation, are allowed to be parked in a manner that is visible from off the property at any one time. 10-20-4(B)(4)(b)

The restriction on the number of customers that may visit a home occupation in a 24 hour period. Currently, the limit is 5 clients or customers in the dwelling unit or on the premises during any period of 60 consecutive minutes or more than 12 in any given 24-hour period. 10-20-4(B)(5)

A Restriction on delivery or pick-up of items. Currently the shipment and delivery of products, merchandise or supplies shall be limited to between 7:00 a.m. and 7:00 p.m. and shall regularly occur only in single rear axle straight trucks or smaller vehicles normally used to serve residential neighborhoods. 10-20-4(B)(6)

The prohibition of individuals, other than residents of the household, being employed in the home occupation at the home. 10-20-4(B)(7)

The restriction on hours of operation of a home occupation to between the hours of 7:00 PM and 7:00 AM unless said occupation is contained entirely within the principal building and will not require any on-street parking facilities. 10-20-4(B)(8)

To bring the City's home occupation regulations back into compliance with state law, an ordinance removing the regulatory provisions identified above will need to be adopted.

At the April 13, 2023 in-depth meeting, City Council was briefed on this matter. At this meeting, council asked for more information on the following.

Could a registration or licensing system for home-based businesses be set up?

State Code expressly prohibits this. Section 414.33(3) states "A city shall not prohibit a no-impact home-based business or otherwise require a person to apply, register, or obtain any permit, license, variance, or other type of prior approval from the city to operate a no-impact home-based business."

Can parking requirements be applied to home-based businesses?

Cities may adopt regulations that disallow the use of on-street parking for home-businesses. Currenty Section 10-20-4(B)(4)(a) of City Code states, "The home occupation shall not generate excessive vehicular traffic or parking in the area of the principal structure. Parking shall be restricted to existing on-street and on-site parking associated with the principal structures." City Council retains the option of being able to amend City Code to prohibit the use of on-street parking for home-based businesses.

Do restrictions on how cities may regulate home-based businesses impact building and fire code requirements that may be triggered by the presence of a home based-business?

Section 414.33(5) of State Code states, "A city shall not require as a condition of operating a

home-based business that the property be rezoned for commercial use or that the business owner install or equip fire sprinklers in a single-family detached residential dwelling or any residential dwelling with not more than two dwelling units."

On July 6, 2023, a public hearing before the City Council was held, with no comments received. On July 11, 2023, The Planning and Zoning Commission voted 6-1 to recommend approval of the attached ordinance.

**CITY FINANCIAL IMPACT**

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None.

**ATTACHMENTS**

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1. Home Occupation Regulations(2023) Ordinance (1)

**ORDINANCE NO. 2023-0390**

**ORDINANCE AMENDING SECTION 4, CHAPTER 20 OF TITLE 10 OF CITY CODE – HOME OCCUPATIONS**

**WHEREAS**, home occupations are regulated by Section 4, Chapter 20 of Title 10 of City Code. “Home occupations” as defined by City Code are, “an occupation or business activity which results in a product or service and is conducted in whole or in part in a dwelling unit, and is subordinate to the residential use of the dwelling unit”. The intent of these regulations is to allow for home-based business activities that are not otherwise permitted in residentially zoned districts, but which are clearly subordinate and compatible with the surrounding residential land uses and which will not negatively impact the character of the residential area;

**WHEREAS**, in June 2022, state legislation restricting the manner in which cities in Iowa can regulate home occupations was approved;

**WHEREAS**, a number of the currently adopted provisions of the home occupation regulations contained within City Code have been identified by the City Attorney as noncompliant with state law;

**WHEREAS**, in order to bring the City’s home occupation regulations back into compliance with state law, the proposed ordinance removing the regulatory provisions that are noncompliant with state law will need to be adopted;

**WHEREAS**, the Planning and Zoning Commission did on July 11, 2023, voted 6-1 to recommend approval of this ordinance; and

**WHEREAS**, a public hearing, July 6, 2023, was conducted by the City Council of Muscatine prior to the adoption this ordinance.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MUSCATINE, IOWA:**

**SECTION 1.** The currently adopted version of Section 10-20-4(B)(1)(b) of City Code is here by deleted from City Code.

**SECTION 2.** The currently adopted version of Section 10-20-4(B)(1)(c) of City Code is here by renumbered as Section 10-20-4(B)(1)(b)

**SECTION 3.** The currently adopted version of Section 10-20-4(B)(2)(j) of City Code is here by deleted from City Code.

**SECTION 4.** The currently adopted version of Section 10-20-4(B)(2)(k) of City Code is here by deleted from City Code.

**SECTION 5.** The currently adopted version of Section 10-20-4(B)(3)(a) of City Code is here by deleted from City Code.

**SECTION 6.** The currently adopted version of Sections 10-20-4(B)(3)(b through i) of City Code are hereby renumbered so that start with Section 10-2-4(B)(a) and proceed sequentially.

**SECTION 7.** The currently adopted version of Section 10-20-4(B)(4)(b) of City Code is here by deleted from City Code.

**SECTION 8.** The currently adopted version of Section 10-20-4(B)(4)(a) of City Code is here by renumbered as Section 10-20-4(B)(4)

**SECTION 9.** The currently adopted version of Section 10-20-4(B)(5) of City Code is here by deleted from City Code.

**SECTION 10.** The currently adopted version of Section 10-20-4(B)(6) of City Code is here by deleted from City Code.

**SECTION 11.** The currently adopted version of Section 10-20-4(B)(7) of City Code is here by deleted from City Code.

**SECTION 12.** The currently adopted version of Section 10-20-4(B)(8) of City Code is here by deleted from City Code.

**SECTION 13.** If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

**SECTION 14.** Any Ordinance or part thereof in conflict or inconsistent with the provisions of this Ordinance is repealed.

**SECTION 15.** This ordinance shall be in effect from and after the passage and approval and publication of this ordinance, as provided by law

**PASSED, APPROVED AND ADOPTED** this 7th day of September, 2023.

Attest

**By the City Council of the City of  
Muscatine, Iowa**



Bradley Bark (Sep 12, 2023 17:12 CDT)

**Brad Bark, Mayor**



Carol Webb (Sep 12, 2023 18:10 CDT)

Carol Webb  
City Clerk

First Reading: 8/3/23  
Second Reading: 8/17/23  
Third Reading: 9/7/23  
Publication:



**\*\*\* Proof of Publication \*\*\***

The undersigned, being first duly sworn, on oath does say that he/she is an authorized employee of THE MUSCATINE JOURNAL, morning edition, a daily newspaper printed and published by Lee Enterprises, Incorporated, in the City of Davenport, Scott County, Iowa, and that a notice, a printed copy of which is made a part of this affidavit, was published in said THE MUSCATINE JOURNAL, on the dates listed below.

CITY OF MUSCATINE- Legals account

215 Sycamore Street  
MUSCATINE, IA 52761

ORDER NUMBER 164000

The affiant further deposes and says that all of the facts set forth in the foregoing affidavit are true as he/she verily believes.

  
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Section: Notices & Legals  
Category: 2635 Legal Ordinance  
PUBLISHED ON: 09/18/2023

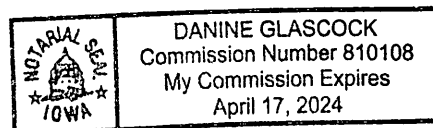
TOTAL AD COST: 83.49

FILED ON: 9/18/2023

Subscribed and sworn to before me by said affiant this 18 day of SEPTEMBER 20 18.

  
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Notary Public in and for Scott County, Iowa



# \*\*\* Proof of Publication \*\*\*

## ORDINANCE NO. 2023-0390

### ORDINANCE AMENDING SECTION 4, CHAPTER 20 OF TITLE 10 OF CITY CODE – HOME OCCUPATIONS

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WHEREAS, a number of the currently adopted provisions of the home occupation regulations contained within City Code have been identified by the City Attorney as noncompliant with state law;

WHEREAS, in order to bring the City's home occupation regulations back into compliance with state law, the proposed ordinance removing the regulatory provisions that are noncompliant with state law will need to be adopted;

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PASSED, APPROVED AND ADOPTED this 7th day of September, 2023.

Attest

By the City Council of the City of

**\*\*\* Proof of Publication \*\*\***

Muscatine, Iowa

Brad Bark, Mayor

Carol Webb  
City Clerk

First Reading: 8/3/23  
Second Reading:  
Third Reading:  
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