

FREMONT COUNTY ORDINANCE NO.: _____

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HOME OCCUPATION ORDINANCE – AN AMENDMENT TO THE FREMONT COUNTY DEVELOPMENT CODE

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AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF FREMONT COUNTY, IDAHO, AMENDING THE FREMONT COUNTY DEVELOPMENT CODE TO REVISE CHAPTER XIV, TO REVISE APPENDIX C, AND TO REPLACE APPENDIX I; ADDING ADDITIONAL PERMITTED COMMERCIAL USES; MODIFYING PARKING SPACE REQUIREMENTS; ESTABLISHING A PURPOSE AND PROCESS FOR THE APPROVAL, CONDITIONS THEREOF, INSPECTIONS, AND COMPLIANCE OF HOME OCCUPATIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners, as the governing body in and for Fremont County, has previously enacted and, from time to time, amended a zoning and development code, known as the Fremont County Development Code or its acronym, "FCDC;" and,

WHEREAS, the Fremont County Development Code defines, regulates, and permissively permits the use of a residential dwelling or home, or any part thereof, for certain commercial purposes; and,

WHEREAS, the Board finds and declares that the use of a residential dwelling or home, or any part thereof, for the purpose of short-term or transient rental is a commercial use; and,

WHEREAS, the Board has determined that the rental of residential dwellings on a short-term basis to visitors provides a community benefit by expanding the number and type of lodging facilities available; and,

WHEREAS, the rental of residential dwellings by the owners thereof, or by an authorized representative, for temporary occupancy has also been identified as a community concern, due to the potential for increased traffic, noise, and density in residential neighborhoods if these uses are not properly regulated; and

WHEREAS, the number of occupants under such temporary rentals has the potential to exceed standards for the design capacity of such structures and to cause health and safety problems, and as such may constitute a danger to life and adjacent property; and

WHEREAS, minimum health and safety standards are necessary to protect both the citizens of the County and the occupants of transient rentals; and

WHEREAS, the Fremont County Planning and Zoning Commission has conducted numerous public hearings regarding the use of residential dwellings for transient rental purposes, has taken significant public comment, and has forwarded its recommendations to the Board of County Commissioners; and,

WHEREAS, the Board finds and declares that permitted commercial uses of residential dwellings shall be amended to include general transient rental uses and to adequately address public health, welfare and safety concerns in home occupations; and,

WHEREAS, the Board of County Commissioners has authority to pass ordinances for the safety, prosperity, good order, and protection of property therein, of the County and its inhabitants pursuant to Idaho Code § 31-714; and,

WHEREAS, it is in the public interest and serves a public purpose that this ordinance be adopted.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREMONT COUNTY, IDAHO, THAT THE FREMONT COUNTY DEVELOPMENT CODE IS AMENDED AS FOLLOWS:

SECTION ONE – Amended Definition of "Commercial" in FCDC Chapter XIV – Definitions, Paragraph P:

Lettered paragraph P, titled "Commercial," of Chapter XIV is hereby stricken in its entirety and replaced with the following:

- P. **Commercial.** Includes all land uses in Standard Land Use Classification (SLUC) 12 "Group Quarters;" 13 "Residential Hotels;" 15 "Transient Lodgings;" 4923 "Travel Agency;" 4924 "Transportation Ticket Services;" 52-59 "Trade;" 61-69 "Services;" 71-79 "Cultural, Entertainment, and Recreational;" and 8221 "Veterinary Clinic and Hospital;" except as follows:
1. SLUC 637 "Warehousing and Storage Services, Excluding Stockyards," which shall be considered an industrial use category, or
 2. Any use in SLUC 639 "Rental and Leasing Services;" 64 "Repair Services;" 66 "Contract Construction Services;" 72-79 "Cultural, Entertainment, and Recreational;" or 8221 "Veterinary Clinic and Hospital;" which includes an outdoor or only partially enclosed work and/or materials handling and/or storage yard of more than 10,000 square feet. All such uses shall be considered Industrial.

SECTION TWO – Amendment of FCDC Appendix C – Detailed Performance Standards for Off-Street Parking and Loading:

Table C.1, titled "Minimum off-Street Parking Requirements for Residential, Retail, and Service Uses," of Appendix C, titled "Detailed Performance Standards for Off-Street Parking and Loading," is amended as follows (underlined text is added, stricken text is deleted):

<i>land use</i>	<i>parking spaces</i>
dwelling (SLUC 11, 14)	2 per unit
lodging places (SLUC <u>12, 13</u> , 15)	1 per unit plus 1 (<u>commercial zones, nodes</u>) <u>1 per 4 advertised occupants (home occupancy)</u>

All other Table C.1 entries remain unaltered.

SECTION THREE – Replacement of FCDC Appendix I – Detailed Performance Standards for Home Occupations:

Appendix I, titled "Detailed Performance Standards for Home Occupations," is hereby stricken in its entirety and replaced with the following:

APPENDIX I – DETAILED PERFORMANCE STANDARDS FOR HOME OCCUPATIONS

1. **Purpose.** The performance standards of this Appendix permit limited commercial activity in individual residential dwellings without requiring a zoning change, while assuring that such activity does not diminish the overall character of the neighborhood or the general health, welfare, and safety of the County.
2. **Permit.** Approved Home Occupations require a Class I permit, subject to the time limitations and other restrictions of this Ordinance and Appendix.
3. **Acceptable Uses.** Subject to the restrictions of this Appendix and this Ordinance, any permitted Commercial use may qualify as a home occupation. Industrial uses do not qualify for home occupation.
 - a. **Transient Rental.** Transient rental or occupancy is generally defined as rental or occupancy of a structure for sleeping or lodging for 30 consecutive days or less, in exchange for a fee or other similar consideration. Renting a property for transient use requires a permit as authorized herein.
 - i. A contact person or agent within the local Fremont County calling area must be identified on the application, be reasonably available by phone, and able to respond if there is a problem during the dwelling's use as a transient rental. The name and phone number of the contact person shall be posted inconspicuously on the transient rental building, but where a neighbor can easily read it.
 - b. **Residential Care Facilities.** Defined as a living arrangement in which people with special needs, especially older people with disabilities, reside in a facility that provides help with everyday tasks such as bathing, dressing, and taking medication. Also defined as children's institutions which include, but are not limited to, foster homes, maternity homes, children's therapeutic outdoor programs, or any facilities providing treatment, therapy or rehabilitation for children.
 - i. To qualify as a home occupation, a residential care facility must have eight (8) or fewer residents and two (2) or fewer resident staff.
 - ii. Residential care for the elderly, children's institutions (as defined by the Child Care Licensing Reform Act), and similar home occupations, shall be separately certified or licensed as required by law.

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- c. **Exemptions.** This Appendix shall not apply to, and no permit shall be required for home occupancy:
 - i. for incidental use by an owner or tenant of some portion of a dwelling and/or premises as a home office or work space; or
 - ii. for the full-time use of some portion of a dwelling and/or premises as a home office or work space where there are no employees and only occasional, sporadic visitors; or
 - iii. for any rental use where the length of stay is thirty-one (31) days or greater.
- 4. **Conditions of Approval.** Approval of a home occupation permit does not change any requirement of this Ordinance applicable to the dwelling to which it is accessory, including all requirements of the adopted residential building codes and public health codes. Where any requirement of this Appendix differs from that of this Ordinance, the more restrictive requirement shall prevail.
- 5. **Permit Duration and Renewal.** A Class I Home Occupation Permit shall be valid for two (2) years from the date of approval. A permit may be renewed for an additional two (2) years with the payment of a renewal fee as published and amended, initially set at fifty dollars (\$50), along with the submission of the renewal application and all applicable forms and reports.
- 6. **Public Health, Safety, and Welfare.** An application for a Home Occupation Permit must demonstrate compliance with certain public health, safety and welfare considerations.
 - a. **Municipal Water.** If applicant's dwelling is served by a municipal water service, applicant must submit written evidence from the water service provider that the service account is in good standing and of adequate service capacity for the proposed home occupation use. This verification is required to be updated and submitted with any renewal application.
 - b. **Well Water.** If applicant's dwelling is served by either a private or community well, applicant must submit the results of a water sample test from a professional water testing service or laboratory of water drawn from inside the dwelling. This test must be performed immediately prior to each renewal period, with a copy of the lab report submitted with the renewal application.
 - c. **Sewer.** If applicant's dwelling is served by a municipal or county sewer system, applicant must submit written evidence from the sewer service provider that the service account is in good standing and of adequate service capacity for the proposed home occupation use. This verification is required to be updated and submitted with any renewal application.
 - d. **Septic.** If applicant's dwelling is served by either a private or community septic system, applicant must submit the results of both a "condition" evaluation and a "capacity" evaluation, as explained below. The condition evaluation must be performed immediately prior to each renewal period, with a copy of the inspector's report submitted with the renewal application.
 - i. **Condition Evaluation.** The applicant must submit an evaluation report from a professional septic system installer or servicer rating the overall condition of the septic system, the septic tank capacity, the next estimated date for septic tank pumping, and any observed concerns with installation, condition, and performance.
 - ii. **Capacity Evaluation.** Fremont County will only accept an evaluation from Eastern Idaho Public Health District stating the rated peak and continuous capacity of the installed septic system. This rating will be used to determine the maximum allowable occupancy or employee count for an approved home occupation permit, based on waste water generation of 75 gallons per person per day (75 GPD). An applicant is free to retrofit or replace a septic system to achieve higher capacity and upon installation verification by Eastern Idaho Public Health District, the home occupancy permit will be amended without charge.
 - e. **Fire Protection.**
 - i. **Smoke Detectors, Carbon Monoxide Detectors, and Fire Extinguishers.** The applicant shall be responsible for installing, testing, and maintaining smoke detectors, carbon monoxide detectors, and fire extinguishers specific to the proposed home occupancy use, per manufacturer's instructions and as required by code. All detectors shall be tested semi-annually per the manufacturer's instructions. Specific guidelines for proper installation and maintenance can be obtained from the Fremont County Planning and Building Department or the local fire department.
 - ii. **Open Burning Ordinance.** In the case of a proposed transient rental use, the applicant shall be responsible to understand the Fremont County Open Burning Ordinance, to post the Open Burning Ordinance in a conspicuous place, and to inform all guests, tenants, lodgers, and visitors of the ordinance and its consequences.

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- f. **Nuisances.** There shall not be any noise, litter, or odor noticeable at or beyond the property line resulting from the use of the dwelling for home occupancy. Weekly solid waste collection service shall be provided, along with a sufficient number of suitable garbage receptacles. Except on collection day, these garbage receptacles shall not be readily visible from the street (see Paragraph 11, Outdoor Storage, below). Trash in plastic bags shall not be placed outside of garbage receptacles. Where applicable, animal- and pest-proof garbage receptacles must be used.
- 7. **Maximum Floor Area.** Home occupations may be located within dwellings and/or accessory buildings, or any part thereof.
- 8. **Nonresident Employees.** No home occupation shall have more than two (2) part- or full-time employees who are not members of the resident family.
- 9. **Traffic.** Vehicular traffic generated by the use of the dwelling for home occupancy shall not exceed what is reasonably expected within a residential neighborhood.
- 10. **Off-Street Parking.** Home occupations shall provide off-street parking for all employees, guests, lodgers, visitors, etc., and any vehicles associated with the home occupation in compliance with the requirements of Appendix C, "Detailed Performance Standards for Off-Street Parking and Loading." All camper trailers, boat trailers, utility trailers, transport trailers, or any other type of trailer must also be parked off-street.
- 11. **Outdoor Storage.** The storage of any materials or solid waste associated with a home occupation shall be:
 - a. within an enclosed structure, or
 - b. within an area that is effectively screened from public view.
- 12. **Signs.** Excluding the contact information signs, home occupations may display only the following signs:
 - a. one non-illuminated wall sign of no more than six (6) square feet, and
 - b. one non-illuminated, on-site directional sign of no more than four (4) square feet.
- 13. **Idaho State Tax Commission Registration.** Applicants must provide their Idaho State Tax Commission Registration information. Failure to collect and remit any and all applicable sales and use taxes may result in permit suspension or revocation.
- 14. **Inspection.** The applicant shall grant permission to Fremont County and Eastern Idaho Public Health District to perform a physical inspection of that part of the dwelling and premises used for home occupancy at least once a year. The County will notify applicant with at least five (5) days' notice of an upcoming inspection and will conduct the inspection during traditional business hours. The inspection shall be constrained to only those applicable items defined in this Ordinance and Appendix.
- 15. **Compliance.** The County shall, in writing, notify the applicant of any deficiencies identified in the inspection, along with the reasons therefore, and serve such notice either by personal service or by certified mail, with service being effective upon mailing. Any deficiencies identified during an inspection must be corrected within thirty (30) days of notice, with written evidence of the corrections provided to the County. Failure to correct deficiencies in the allotted time may result in suspension or revocation of the Home Occupation Permit. If the same deficiency is found to occur three (3) times within the permitted time period, the permit shall be revoked with applicant prohibited from re-applying for two (2) years from the date of the revocation.

SECTION FOUR – Effective Date:

This Ordinance shall become effective on a date six (6) months following its adoption by the Board of County Commissioners and be in full force and effect as of the first (1st) day of the seventh (7th) month from the date of its publication, as required by law.

DULY PASSED AND ADOPTED this _____ day of _____, 2009.

APPROVED

Paul Romrell, Chairman of the Board of Commissioners

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Ronald "Skip" Hurt, Commissioner

Lee Miller, Commissioner

ATTEST:

APPROVED AS TO FORM:

Abbie Mace, County Clerk

Joette Lookabaugh, Prosecuting Attorney

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