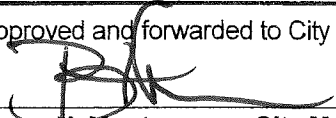




## STAFF REPORT

**Date:** April 22, 2014  
**To:** Bryan H. Montgomery, City Manager  
**From:** Kenneth W. Strelow, Senior Planner

Approved and forwarded to City Council  
  
Bryan H. Montgomery, City Manager

**Project:** Ordinance Amending OMC Section 9.1.1120 (Home Business Permits)  
Relating to Internet-Only Based Businesses

### Summary

This project is a proposed ordinance to consider amendments to Oakley Municipal Code (“OMC”) Section 1120 of Chapter 1 of Title 9 (“Home Business Permits”). Proposed modifications include 1) increasing the maximum number of internet-only based businesses allowed per parcel (OMC subsection 9.1.1120(c)(i)(2)), and 2) clarifying the number, type and size of commercial vehicles allowed to be kept at the home in conjunction with the business (OMC subsection 9.1.1120(c)(ii)(12)).

Staff recommends the City Council waive the first reading and introduce an ordinance to amend OMC Section 9.1.1120 – Home Business Permits.

### Background

During the February 11, 2014 regular City Council meeting, the Council directed Planning Staff to bring back an ordinance amending the Home Business Permit section of the municipal code to increase the number of internet related businesses allowed at a single residence. The purpose of doing so would update the code to relate to current and future trends in internet-only based businesses, and encourage economic activity by allowing an overall higher number of businesses in Oakley. While proposing to increase the number of home businesses allowed per parcel, Staff also addressed the number and types of vehicles allowed to be kept at any one parcel to avoid the potential of increased internet only businesses resulting in an increase of commercial vehicles at one residence. Limiting the number of commercial vehicles per residence is consistent with the Home Business Permit regulations by allowing home businesses without disrupting the residential character of a neighborhood.

The current ordinance allows no more than two home businesses on any single parcel (OMC subsection 9.1.1120(c)(i)(2)). Since, internet-only based businesses should have no external evidence of operation and should not result in any physical changes to the property, allowing more than two internet-only businesses on a single parcel should

have no more impact than only one such business. This amendment proposes allowing up to eight additional internet-only based businesses permits on one parcel in addition to the already allowed two home based businesses, but as covered later in this Staff Report, the Council may choose a different number or no limit whatsoever.

In making the proposed amendment, Staff also recommends amending OMC subsection 9.1.1120(c)(ii)(12), which restricts the number of commercial vehicles allowed per business to one per business. Since the Council is concurrently addressing the parking of certain commercial vehicles in residential zones, it is recommended the proposed ordinance similarly addresses the issue and uses consistent language and definitions. This subsection is proposed to be amended to allow no more than one commercial vehicle for each business, up to a maximum of two vehicles per parcel. This amendment will ensure that allowing up to 10 or more home based businesses won't result in the existing section allowing up to 10 or more commercial vehicles, which would result in a disruption to the residential character of a neighborhood.

The proposed language also clarifies a commercial vehicle as any vehicle used in conjunction with the business and/or with external evidence of it being related to the business (i.e. on-vehicle storage of supplies or on-vehicle signage), or as defined in California Motor Vehicle Code Section 15210<sup>1</sup>. Examples of "commercial vehicles" that would be allowed are pickup trucks up to "1-ton" rating (e.g. Ford 350, Ram 3500) and small box vans. As currently stated in the code, vehicles such as dump trucks, cement trucks, tow trucks, equipment trailers, semis or tractor trailers would not be allowed. The California Motor Vehicle Code encompasses most of these types of vehicles.

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**Table 1. Summary of Proposed Amendments**

<b>OMC Subsection</b>	<b>Existing Code</b>	<b>Proposed Code</b>
<b>9.1.1120(c)(i)(2)</b>	Up to 2 businesses per parcel	Up to 2 businesses per parcel, plus 8 additional internet-only based businesses
<b>9.1.1120(c)(ii)(12)</b>	Up to 1 commercial vehicle per business	Up to 1 commercial vehicle per business for a maximum 2 businesses

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**Existing and Proposed Ordinance Language**

The following section of this Staff Report includes existing and proposed excerpts from portions of the OMC that regulate the number of businesses allowed per parcel and allowable commercial vehicles, respectively. Other subsections of the Home Business Permits ordinance have not been included in this Staff Report or the proposed ordinance (e.g. OMC subsections 9.1.1120(c)(i)(1, 3 and 4)). For additional background, the entire

existing Home Business Permits ordinance with proposed tracked changes has been included as an attachment to this staff report.

Existing Subsection 9.1.1120(c)(i)(2):

c. Requirements.

i. The Home-Based Business shall meet the following requirements:

2. Employees working at the site shall be limited to a maximum of two people, one of whom must be a resident, as long as the parking requirements are met and off-street parking is not impacted. A maximum of two Home-Based Businesses shall be allowed per parcel.

Proposed Subsection 9.1.1120(c)(i)(2):

2. Employees working at the site shall be limited to a maximum of two people, one of whom must be a resident, as long as the parking requirements are met and off-street parking is not impacted. A maximum of two Home-Based Businesses shall be allowed per parcel with up to an additional eight Internet-Only Based Businesses allowed per parcel. Additional Internet-Only Based Businesses shall not result in on-site employees that are not residents of the subject home.

Existing Subsection 9.1.1120(c)(ii)(12):

c. Requirements.

ii. The Home-Based Business shall not:

12. Result in more than one (1) commercial vehicle being used or stored in conjunction with the home business. The maximum size of the vehicle shall not exceed one (1) ton. Vehicles such as, but not limited to, dump trucks, cement trucks, tow trucks, equipment trailers, semis or tractor trailers would not be allowed.

Proposed Subsection 9.1.1120(c)(ii)(12):

12. Result in more than one (1) commercial vehicle being used or stored in conjunction with a single Home-Based Business, up to a maximum of two vehicles for two separately licensed Home-Based Businesses per parcel. A commercial vehicle shall be any vehicle used in conjunction with the business and/or with external evidence of it being related to the business (i.e. on-vehicle storage of supplies or on-vehicle signage), or as defined in California Motor Vehicle Code Section ("CMVC") 15210. Vehicles such as, but not limited to, dump trucks, cement trucks, tow trucks, equipment trailers, semis or tractor trailers, or as otherwise covered under CMVC 15210 shall not be allowed.

### **Optional Language**

If the Council would rather allow less or more additional Internet-Only Based Businesses per parcel, Staff can modify the following sentence proposed in OMC subsection 9.1.1120(c)(i)(2) to accommodate that direction: "A maximum of two Home-Based Businesses shall be allowed per parcel with up to an additional eight Internet-Only Based Businesses allowed per parcel."

### **Environmental Analysis**

This project is exempt from further analysis under the California Environmental Quality Act ("CEQA") Guidelines Section 15061(b)(3) in that adoption of the ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment.

### **Recommendation**

City Council waive the first reading and introduce an ordinance to amend OMC Section 9.1.1120, Home Business Permits.

### **Attachments**

1. OMC Section 9.1.1120 with Proposed Tracked Changes
2. Proposed Ordinance

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<sup>i</sup> Source: [www.dmv.ca.gov](http://www.dmv.ca.gov)

CMVC Section 15210(b)

(1) "Commercial motor vehicle" means any vehicle or combination of vehicles that requires a class A or class B license, or a class C license with an endorsement issued pursuant to paragraph (2), (3), (4), or (5) of subdivision (a) of Section 15278.

(2) "Commercial motor vehicle" does not include any of the following:

(A) A recreational vehicle, as defined in Section 18010 of the Health and Safety Code.

(B) Military equipment operated for military purposes by civilian and noncivilian personnel, that is owned or operated by the United States Department of Defense or United States Department of Homeland Security, including the National Guard, as provided in Parts 383 and 391 of Title 49 of the Code of Federal Regulations.

(C) An implement of husbandry operated by a person who is not required to obtain a driver's license under this code.

(D) Vehicles operated by persons exempted pursuant to Section 25163 of the Health and Safety Code or a vehicle operated in an emergency situation at the direction of a peace officer pursuant to Section 2800.

## Oakley Municipal Code Section 9.1.1120 with Proposed Tracked Changes

(Deletions are strike outs, additions are bolded and underlined)

### 9.1.1120 Home Business Permits.

- a. Definition. A Home-Based Business is a commercial business or other activity conducted in a residential dwelling by the resident of the dwelling unit, whereby the activity is clearly incidental and subordinate to the use of the dwelling as a residence., and which results in no external alteration to the appearance of the dwelling unit and will not change the residential character of the unit.
- b. Purpose. The purpose of the Home-Based Business is to maintain the quality and integrity of neighborhoods, while promoting home-based businesses that meet the above definition. All Home-Based Businesses require a permit.
- c. Requirements.
  - i. The Home-Based Business shall meet the following requirements:
    1. Incidental and subordinate to the residence, as determined by Planning staff.
    2. Employees working at the site shall be limited to a maximum of two people, one of whom must be a resident, as long as the parking requirements are met and off-street parking is not impacted. A maximum of two Home-Based Businesses shall be allowed per parcel **with up to an additional eight Internet-Only Based Businesses allowed per parcel. Additional Internet-Only Based Businesses shall not result in on-site employees that are not residents of the subject home.**
    3. Delivery vehicles shall be limited to those types of vehicles that typically make deliveries to single-family neighborhoods, including the U.S. Postal Service, UPS, Federal Express, and delivery courier services using light vans. No deliveries by semi-trucks or other vehicles typically associated with service to commercial areas are allowed.
    4. No customers or clients shall be served from the residence, with the exception of in-home lessons for educational purposes, not to exceed six (6) people in total, as long as it does not create a nuisance to neighbors or those uses approved by State law.

- ii. The Home-Based Business shall not:
  1. Result in significant interior alterations or remodeling of home in connection with the home business. There shall be no exterior indication of the home occupation.
  2. Result in outdoor storage or display of merchandise, equipment, appliances, tools, materials, or supplies associated with a Home-Based Business. Storage of flammable or hazardous materials shall not be allowed without Fire Department approval.
  3. Result in the installation of advertising signs, window display, or other identification of the Home-Based Business on the premises, except the existence of a sign painted on one vehicle used in the business.
  4. Result in the reduction of the required parking for the residence or result in the addition of the use of on-street parking in excess of typical residential use.
  5. Result in more than 25% of the total floor area of the dwelling for use by the business, including the use of the garage. Garages may be used as long as the parking requirements can still be met (Two off-street spaces outside of front setback). Existing permitted accessory structures may be used and are subject to the 25% limit (basing the percentage on both units).
  6. Be used as a staging area for employees to meet and disperse in company vehicles.
  7. Create any excessive noise, vibration, glare, fumes, dust, or electrical interference to adjacent residents during the typical work hours of 7:30 a.m. to 5 p.m. (weekdays), and does not create any detectable noise, vibration, glare, fumes, dust, or electrical interference to adjacent residents beyond the typical work hours.
  8. Result in excessive use of, or unusual discharge with respect to one or more of the following utilities: water, sewer, electric, garbage or storm drains.
  9. Result in the preparation or packaging of food, otherwise known as a Cottage Food Operation, unless the business owner provides the City of Oakley with a full copy of the approved Contra Costa Health Services California Homemade Food Act AB 1616 (Gatto) Registration/Permitting Form for the proposed business. The form shall be dated and approved by an officer of Contra Costa Health Services prior to filing a City of Oakley Home-Based

Business Permit application. Notwithstanding this section, operators of a Cottage Food Operation may have customers visit the residence by appointment so that no more than one vehicle will visit at any given time.

10. Result in the generation of vehicular or pedestrian traffic in excess of that associated with the residential use.

11. Result in the use of yard space or any activity outside the main house or accessory building which is not normally associated with a residential use. This includes the storage of fill materials including dirt, rock, bark and similar materials.

12. Result in more than one (1) commercial vehicle being used or stored in conjunction with the home business **a single Home-Based Business, up to a maximum of two vehicles for two separately licensed Home-Based Businesses per parcel. A commercial vehicle shall be any vehicle used in conjunction with the business and/or with external evidence of it being related to the business (i.e. on-vehicle storage of supplies or on-vehicle signage), or as defined in California Motor Vehicle Code Section ("CMVC") 15210. Vehicles such as, but not limited to, dump trucks, cement trucks, tow trucks, equipment trailers, semis or tractor trailers, or as otherwise covered under CMVC 15210 shall not be allowed.** ~~The maximum size of the vehicle shall not exceed one (1) ton. Vehicles such as, but not limited to, dump trucks, cement trucks, tow trucks, equipment trailers, semis or tractor trailers would not be allowed.~~

13. Result in the repair of vehicles, the use of sprayers, or other similar activities.

14. Other uses which the Community Development Director determines to be inappropriate or incompatible with a residential neighborhood.

15. Result in the sales of firearms and ammunition.

d. Large Lot Residential Sites (R-40 or greater). On parcels Zoned R-40 or greater, minor deviations from the above standards may be granted where it can be demonstrated that the home-based business will not impact adjoining properties and the integrity of the residential neighborhood. For example, a minor deviation may be granted to allow for a limited quantity of outdoor storage on a large lot where the material would not be visible from adjoining properties. In order to process a minor deviation:

1. An applicant shall request a minor deviation as part of the application and demonstrate how the deviation will not negatively impact adjoining properties or the residential integrity of the neighborhood;
  2. Minor deviations considered on a case-by-case basis by the Community Development Department;
  3. The Community Development Department shall notify adjoining residents and land owners by mail of the request for a home-based business with a minor deviation, including residents and owners to the sides, front, and rear of the subject property;
  4. The Community Development Director may approve minor deviations subject to conditions to ensure the minor deviation will not negatively impact adjoining properties or the residential integrity of the neighborhood.
- e. Appeal Process. The appeal of a staff decision on a Home-Based Business Permit is required to be submitted within thirty (30) days, and the Zoning Administrator would hear the decision, after noticing to adjacent (including sides, front and rear) residents. The appeal of a Community Development Director decision would be heard by the Planning Commission, and if necessary the City Council.
- f. Transitioning of New Requirements.
1. Existing Home-Based Business Permits.
    - a. Existing permit holders may continue to operate in conformance with the regulations and conditions of approval of their permit as a non-conforming use for one year after adoption of new regulations. An existing permit holder may request to continue to operate beyond the one-year transition period as a nonconforming use based upon the following:
      - i. The home-based business has been operating in conformance with the regulations in effect when the permit was granted and its conditions of approval; and
      - ii. The home-based business does not negatively impact adjoining properties or the residential integrity of the neighborhood.
    - b. The Community Development Director may approve, approve with modifications, or deny a home-based business permit that is under consideration as a non-conforming use beyond the one-year transition period.



c. The nonconforming status of a home-based business permit shall automatically expire if the permit lapses, or if the applicant fails to comply with the regulations and conditions of approval upon which it is granted.

(Sec. 2, Ordinance No. 03-13, adopted February 26, 2013; Sec. 1, Ordinance No. 02-13, adopted February 26, 2013)

ORDINANCE NO. XX-14

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKLEY  
MAKING FINDINGS AND AMENDING OAKLEY MUNICIPAL CODE SECTION 1120  
OF CHAPTER 1 OF TITLE 9 TITLED "HOME BUSINESS PERMITS" RELATING TO  
INTERNET-ONLY BASED BUSINESSES

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THE CITY COUNCIL OF THE CITY OF OAKLEY DOES ORDAIN AS FOLLOWS:

Section 1. Findings

The City Council hereby finds and determines as follows:

**WHEREAS**, on February 11, 2014 the Oakley City Council directed Planning Staff to bring back an ordinance amending the Home Business Permit regulations (Oakley Municipal Code ("OMC") Section 9.1.1120) with amendments increasing the number of internet related businesses allowed at a single residence; and

**WHEREAS**, the purpose of the amendment is to update the code to relate to current and future trends in internet-only based businesses, and to encourage economic activity; and

**WHEREAS**, under the existing ordinance, increasing the number of home businesses allowed per parcel would result in increasing the number of commercial vehicles allowed at any one parcel as well; and

**WHEREAS**, this ordinance amends two separate subsections of OMC section 9.1.1120. The first amendment addresses an increase in the number of Internet-Only Based Businesses (OMC subsection 9.1.1120(c)(i)(2), and the second amendment addresses the keeping of commercial vehicles on any one parcel or at any one residence with a home based business; and

**WHEREAS**, the amendment to address the number and types of vehicles allowed to be kept at any one parcel will regulations in place that will avoid the potential of increased Internet-Only Businesses resulting in an increase of commercial vehicles at one residence, which would disrupt the residential character of a neighborhood.

Section 2. Code Amendments

The following subsections of OMC Section 1120 of Chapter 1 of Title 9 are hereby amended as follows:

**OMC Subsection 9.1.1120(c)(i)(2):**

"2. Employees working at the site shall be limited to a maximum of two people, one of whom must be a resident, as long as the parking requirements are met and off-street parking is not impacted. A maximum of two Home-

Based Businesses shall be allowed per parcel with up to an additional eight Internet-Only Based Businesses allowed per parcel. Additional Internet-Only Based Businesses shall not result in on-site employees that are not residents of the subject home.”

**OMC Subsection 9.1.1120(c)(ii)(12):**

“12 Result in more than one (1) commercial vehicle being used or stored in conjunction with a single Home-Based Business, up to a maximum of two vehicles for two separately licensed Home-Based Businesses per parcel. A commercial vehicle shall be any vehicle used in conjunction with the business and/or with external evidence of it being related to the business (i.e. on-vehicle storage of supplies or on-vehicle signage), or as defined in California Motor Vehicle Code Section (“CMVC”) 15210. Vehicles such as, but not limited to, dump trucks, cement trucks, tow trucks, equipment trailers, semis or tractor trailers, or as otherwise covered under CMVC 15210 shall not be allowed.”

Section 3. California Environmental Quality Act (CEQA) Finding

This project is exempt from the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Section 15061(b)(3) in that adoption of the ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment.

Section 4. Severability

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases may be held unconstitutional, invalid or unenforceable.

Section 5. Effective Date and Posting.

This ordinance shall take effect and be in force thirty (30) days from and after the date of its passage. The City Clerk shall cause the ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation, or by publishing a summary of the proposed ordinance, posting a certified copy of the proposed ordinance in the City Clerk’s Office at least five (5) days prior to the City Council meeting at which the ordinance is to be adopted, and within fifteen (15) days after its adoption, publishing a summary of the ordinance with the names of the Council Members voting for and against the ordinance.

ADOPTED, THIS \_\_\_\_ day of \_\_\_\_\_, 2014 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Approved: \_\_\_\_\_  
Randy Pope, Mayor

Attest: \_\_\_\_\_  
Libby Vreonis, City Clerk                      Date