

(First published in The Ark Valley News on March 21, 2019.)

ORDINANCE NO: 644

**AN ORDINANCE CONCERNING THE AMENDMENT OF CHAPTER 8 SECTION 1 OF THE ZONING REGULATIONS OF THE CITY OF BEL AIRE, KANSAS, ALL WITHIN THE CITY OF BEL AIRE, SEDGWICK COUNTY, KANSAS.**

Be it ordained by the Governing Body of the City of Bel Aire, Kansas:

**Section 1. AMENDING SECTION 2.03 OF THE BEL AIRE SUBDIVISION REGULATIONS OF THE MUNICIPAL CODE CHANGING THE DEFINITION OF HOME OCCUPATION:**

HOME OCCUPATION- A business, profession, occupation, trade, or hobby conducted by a person in a dwelling unit or accessory structure, for financial income or support equal to or greater than \$2500 per year. Home Occupations are always accessory to the use of a dwelling unit as a residence.

**SECTION 3. REASSIGNMENT OF ORDINANCE SECTIONS:**

8.01 HOME OCCUPATIONS

8.02 GENERAL STANDARDS FOR ALL PERMITTED HOME OCCUPATIONS WITHIN THE CITY OF BEL AIRE:

8.03 HOME OCCUPATIONS PERMITTING PROCESS

8.04 NON CONFORMING USES

8.05 TEMPORARY ZONING WAIVER

8.06 PLANNED UNIT DEVELOPMENT

8.07 WIRELESS TELECOMMUNICATIONS FACILITIES REGULATIONS

**Section 2. AMENDING SECTION 8.01 OF THE BEL AIRE SUBDIVISION REGULATIONS OF THE MUNICIPAL CODE TO STATE :**

**8.01 HOME OCCUPATIONS**

HOME OCCUPATION- A business, profession, occupation, trade, or hobby conducted by a person in a dwelling unit or accessory structure, for financial income or support equal to or greater than \$2500 per year. Home Occupations are always accessory to the use of a dwelling unit as a residence.

PURPOSE AND SCOPE This section is intended to permit the establishment of certain incidental and accessory Home Occupations in residential areas under conditions that will ensure their compatibility with the character of the residential district and subject neighborhood. In order for a home occupation to be lawful, it must comply with Chapter 3 of the City Code, and all standards of this section. A lawful home occupation shall be considered an accessory use and shall remain subordinate to the residential use. These regulations recognize that many types of work can be done in a home with little or no impact upon the surrounding neighborhood.

A. **Authorization Specific to Home Occupations.** Any person using a dwelling unit in any zoning district for a Home Occupation is required to have approval of the Planning Commission through the conditional use process unless otherwise specified in this section. Beyond requirements of this section, maintaining all other applicable State and local permits associated with a business or permitted use, shall be standard terms of all Home Occupation authorized within the City.

**B. Exempted: Home Occupations NOT required to register with the City:**

1. **No impact home occupations.** A home occupation existing within a dwelling that (1) complies with all of the use limitations for the zoning district in which it is located and (2) does not materially change the existing noise, traffic, odor, outdoor external storage or external lighting requirements of the neighborhood in which it operates is not required to be registered with the City. A list of examples of no impact home occupations is included in section 8.03 of this article. The list in section 8.03 is not all –inclusive but intended to provide guidance regarding what is acceptable. Other local, State and federal health and safety regulations may apply depending on the specific facts of the business in question, and be enforced by the City as required.
2. **Hobby generating less than \$2500 per year.** A hobby is defined as an activity by the occupant of a dwelling purely for personal enjoyment, amusement or recreation, and compliant with all City ordinances, not

garnering more than \$2500 per year in financial income or support. All hobby activities generating more than \$2500 per year in financial income or support shall be considered home occupations and must comply with this regulation.

3. **Hobby automotive repairs.** Regardless of financial income amounts generated, all home automotive care hobby activities shall be limited to occupant's vehicles, occupant's immediate family's vehicles, and *occasional* non-occupant repairs. Non occupant repairs occurring two or less times a calendar year, shall be presumed to be occasional. All automotive care related hobby activities generating more than \$2500 per year in financial income or support shall be considered home occupations and must comply with this regulation.
  
4. **Exempted Generally.** Door to door peddlers, vendors operating within the City pursuant to a valid temporary use or administrative permit issued by the City are generally exempted. Tax-exempt charitable organizations are generally exempted from the requirement to register as home occupations. Temporary and special event activities such as garage sales, bake sales, lemonade stands, or temporary lawn care operations are generally exempted from the requirement to register as home occupations. Other local, state, and federal health and safety regulations including -- *Article 3 of The City of Bel Aire Code*-- may apply to the exempted activities described within this paragraph.

**C. Home Occupations REQUIRED to register with the City:**

A home occupation within a dwelling that (1) complies with all of the use limitations for the district in which it is located and (2) MINIMALLY changes the existing noise, traffic, odor, outdoor external storage or external lighting requirements of the neighborhood as determined by the Zoning Administrator is required to be registered with the City.

Minimal impact for registration purposes shall mean a permitted business with actual or anticipated:

- 1) Business traffic to or from the residence in excess of five (5) vehicles per day,
- 2) Requiring external storage used in the home occupation,
- 3) Businesses having one (1) or more business related signs displayed and visible to the outside,
- 4) Business having more than two (2) on site employees other than a members of the immediate family permanently occupying such residence.
- 5) Business raising certain public health, public safety, or public welfare concerns determined to be minimal by the Police Chief or City Zoning Administrator.

A list of examples of MINIMAL impact home occupations is included in section 8.03 of this article. The list in section 8.03 is not all –inclusive but intended to provide guidance regarding what is acceptable. Other local, State and federal health and safety regulations may apply and be enforced by the City as required.

- D. **Registration Requirements:** Article 3 of the City Code requires persons operating an allowable home occupation that is described in 8.01 (C) and not exempt by 8.01 (B) of this Article to register that home occupation annually and pay to the City Clerk or his or her designee a permit fee for a *Business Registration and Permit to Operate certificate*. Application requirements for the *Business Registration and Permit to Operate certificate* are specified in Chapter 3 of the City Code. The registration fee for *Business Registration and Permit to Operate certificate* shall be set forth in the City fee schedule. Additional information may be required as necessary to enable the Clerk and Zoning Administrator to determine whether such home occupation is in conformance with local ordinances regulating home occupations.
- E. **Home Occupations REQUIRED TO HAVE A CONDITIONAL USE PERMIT:** Persons operating a home occupation that is not exempt by sections 8.01(B), and exceeds the impact described in 8.01 (C) or that the City Zoning Administrator determines may create a greater public health or safety concerns for neighborhood residents of the City shall be required to obtain a conditional use permit for that home occupation. The process for obtaining a conditional use permit is found in section 5.03 of this Zoning Regulation.
- F. **Requesting Review by Planning Commission.** Were the City Zoning Administrator determines an applicant shall be required to obtain a conditional use permit, before registering, that applicant may request the planning commission review that determination. If a majority of the planning commission determines that home occupation should only be required to register, the Planning Commission’s determination shall be final.
- G. **Conditional Use Permit Home Occupation Registration requirements:** Upon approval of a condition use permit, Article 3 of the City Code requires persons approved to operate a home occupation to register that home occupation annually and pay to the City Clerk or his or her designee a permit fee for a *Business Registration and Permit to Operate certificate*. Application requirements for the *Business Registration and Permit to Operate certificate* are specified in Chapter 3 of the City Code. The registration fee for *Business Registration and Permit to Operate certificate* shall be set forth in the City fee schedule. Additional information may be required as necessary to enable the Clerk and Zoning Administrator to determine whether such home occupation is in conformance with local ordinances regulating home occupations.

## 8.02 GENERAL STANDARDS FOR ALL PERMITTED HOME OCCUPATIONS WITHIN THE CITY OF BEL AIRE:

- A. The following standards shall apply to all Home Occupations unless specifically modified by residential district standards:

1. Hazardous substances are prohibited, except at the, “consumer commodity” level, as that term is defined in 49 C.F.R. Sec. 171.8.
2. There shall be no outside storage or display of goods or equipment or materials used in the home occupation.
3. Upon approval of the Zoning Administrator, one non-animated, non-illuminated, accessory identification sign of no more than 2 square feet in area shall be permitted, as approved in writing by the Zoning Administrator. All signs must be in accordance with the Sign Code of the City of Bel Aire.
4. Zoning Code authorization of a Home Occupation shall in no way be construed to override any restrictive covenant(s) of record, (i.e., Homeowners Association Covenants).
5. No more than two (2) vehicles which advertise or assist in operation of the business shall be legally parked in the front setback at the Home Occupation at one time.
6. There shall be no overnight parking of vehicles rated over one (1) ton in the front setback.
7. No equipment or process shall be used that creates undue noise, vibration, electrical interference, smoke or particulate matter emissions or odors that are detectable to the normal senses off the lot as determined by the Zoning Administrator. In cases of electrical interference, no equipment or process shall be used which creates a visual effect or an audible interference off the premises in any radio or television receiver or transmitter or causes fluctuation in power voltage.

**8.03 HOME OCCUPATIONS PERMITTING PROCESS:** Permitted home occupations may include, but are not limited to the following list of occupations: This list is not all inclusive but intended to provide guidance regarding what is acceptable.

TIER ONE  NOT REQUIRED TO REGISTER - Examples	TIER TWO  REQUIRED TO REGISTER - Examples	TIER THREE  CONDITIONAL USE PERMIT REQUIRED *
<ul style="list-style-type: none"> <li>• Administrative offices of business/trade</li> <li>• Arts and crafts activities</li> <li>• Baking/catering</li> <li>• Beauty salon</li> <li>• Clerical/secretarial</li> <li>• Day-time adult care</li> <li>• Direct sales</li> </ul>	<p>Occupations similar to those listed in TIER ONE column but additionally having the following actual or anticipated requirements:</p> <ul style="list-style-type: none"> <li>• External storage used for the home occupation</li> </ul>	<p>All other home occupations.</p> <p>Generally these are home occupations which may be substantially similar to those allowed in tier one or tier two but anticipated to create a greater impact than typically exists in Bel Aire for those</p>

<ul style="list-style-type: none"> <li>• Floral or interior design</li> <li>• Jewelry, watch, clock repair; engraving; locksmith;</li> <li>• Maid, laundry service</li> <li>• Internet business</li> <li>• Professional or administrative offices (including psychological, lawyer, accountant, engineer, architect or similar)</li> </ul>	<ul style="list-style-type: none"> <li>• Having one (1) or more business related sign visible from outside. Business related vehicles are excluded from this limitation. Refer to the City Sign Code.</li> <li>• Business traffic to or from the residence in excess of five (5) vehicles per day,</li> </ul>	<p>categories of home occupations, or are occupations raising public health, safety, or welfare concerns for residents as determined by the City Zoning Administrator or Chief of Police.</p>
<ul style="list-style-type: none"> <li>• Photography</li> <li>• Picture framing</li> <li>• Scissors, saw, blade sharpening Small electronics repair</li> <li>• Seamstress, tailoring,</li> <li>• Tutoring, education or training</li> </ul>	<ul style="list-style-type: none"> <li>• More than two (2) on site employees other than a members of the immediate family permanently occupying such residence.</li> <li>• As determined by the Police Chief or City Zoning Administrator Business raising public health, public safety, or public welfare concerns</li> </ul>	

\*Where the City Zoning Administrator determines an applicant shall be required to obtain a conditional use permit, before registering, that applicant may request the planning commission review that determination. If a majority of the planning commission determines that home occupation should only be required to register, the Planning Commission’s determination shall be final.

**SECTION 2. REPEAL.** Section 6.06 B (2) f) is hereby repealed. All ordinances or parts of ordinances in conflict herewith are also hereby repealed.

**SECTION 6. EFFECTIVE DATE.** This ordinance shall take effect and be in force from and after the publication of its summary in the Ark Valley News, and official City newspaper.

Passed by the Governing Body on this 19<sup>th</sup> day of March, 2019.

Signed by the Mayor this 19<sup>th</sup> day of March, 2019.



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MAYOR, David Austin

ATTEST:



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CITY CLERK, Melissa Krehbiel

SEAL

