



DOÑA ANA COUNTY

Department of Planning and Development
Intra-Departmental Memorandum

To: Interested Parties and Reviewing Agencies	Date: January 17, 2012
From: Janine Divyak, AICP, Chief Planner <i>J. Divyak</i>	
Subject: Amendment 2012-001: Home Occupation Permits and other ETZ Zoning Amendments	

The Extra-territorial Zoning Authority is considering amending a portion of the Extra-territorial Zoning Ordinance, No. 88-02, to include home occupation permits and other ETZ zoning amendments, at a public hearing on February 15, 2011 at 5:30 pm in the Commission Chambers of the Government Center. A summary of the proposed amendment to the ETZ Ordinance, see attached, is as follows:

- 1) The definitions in Section 1.6, such as area (differentiating between gross and net), flag lot, vineyard and wine tasting room are included. The definitions of block, child care center, day care center and use have been modified.
- 2) Child care or day care centers with seven or more children in a residential zoning district may be approved by a Special Use Permit (SUP).
- 3) Industrial zoning is currently required for wineries and/or wine tasting rooms, but may be approved in residential land use classifications and EC1 (Neighborhood Commercial) by SUPs, providing the grapes are grown or processed on site and the property is assessed by the County Assessor as agricultural land.
- 4) Clarification of Section 3.1 that a SUP for accessory dwellings follows the procedures of Section 7.2 of the Ordinance.
- 5) Event Center added to the list of permitted uses by a SUP in the EC2 (Community Commercial) zoning classification (see Section 3.1.k.4).
- 6) The existing Home Occupation Section 3.4 has been deleted and revised to establish detailed guidelines and procedures for specific types of home-based businesses and activities that the public may engage in, such as Professional Offices and Services, Instructional Services, Home Artisans, Small Item Repair and Day Care/Child Care uses. These businesses may be permitted in a residential dwelling, providing compliance with the specific regulations of this section and all applicable codes and ordinances are followed.
- 7) The side and rear yard setback requirements have been reduced from 10' to 5' for accessory buildings not exceeding 600 square feet in size. Accessory structures shall not exceed the height of the primary structure, not to exceed 25' and shall not project beyond the primary dwelling unit or the front yard setbacks for lots less than one-half acre.

Please address all questions, comments or concerns to Janine Divyak, janined@donaanacounty.org or phone 575-525-6130 on or before **February 8, 2012**.

**Amendment No. 2012-001 to Las Cruces Extra-Territorial Zoning
Ordinance No. 88-02, as previously amended:
Home Occupation and other ETZ Amendments**

WHEREAS, the Amended Joint City/County Extra-Territorial Zoning and Subdivision Agreement ("JPA") was entered into between the City of Las Cruces and Doña Ana County on February 3, 1997; and,

WHEREAS, based on public input and staff review from the City of Las Cruces and Doña Ana County, the Extra-Territorial Zoning Commission (ETZ) held a public hearing and recommended the adoption of this amendment as required by said JPA, Section IV.A, "All proposed amendments of the Extra-Territorial Zoning Ordinance shall be made to the Commission. The Commission shall then make a recommendation to the Authority"; and,

WHEREAS, the Amendment follows the notice requirements of the ETZ Ordinance 2.1.G and New Mexico State Statute 3-21-14(B) &(D), NMSA 1978 and includes a clarification and expansion of some definitions, uses, home occupation permits, and accessory buildings in residential districts of the ETZ; and,

NOW, THEREFORE, the Extra-territorial Zoning Authority hereby approves and adopts the following amendments to the Las Cruces Extra-Territorial Zoning Ordinance No. 88-02, as previously amended, by adding the language indicated by underlining and deleting the language indicated by ~~strikethrough~~, with instructions in *italics*.

Section 1.6.A *Add the following new definitions*

26. AREA, GROSS—The total horizontal area within a lot or parcel of land before public streets, easements, or other areas to be dedicated or reserved for public use such as stormwater detention and retention facilities and irrigation canals and facilities are deducted from such lot or parcel.

27. AREA, NET—The total horizontal area of a lot or parcel, excluding all public streets or alleys, easements, or other publicly reserved or dedicated improvements such as stormwater detention and retention facilities and irrigation canals and facilities.

Section 1.6.B *Delete the last sentence*

6. BLOCK—Land surrounded on all sides by streets or other transportation or utility rights-of-way, or by physical barriers such as bodies of water or public open spaces. ~~Property bounded on one (1) side by a street, railroad, right-of-way, waterway, unsubdivided areas or other definite boundaries.~~

Section 1.6.C *Change the following number of children from 6 to 7 and require a SUP*

2. CHILD CARE CENTER-- A commercial or public-sponsored establishment for the day or night care of more than ~~six (6)~~ seven (7) individuals under the age of eighteen (18) years, not to include a halfway house as defined under Section 1.6.H of this Article.

Section 1.6.D *Change the following number of children from 5 to 7 and require a SUP*

1. DAY CARE CENTER—Any child care arrangement that provides day care on a regular basis for more than four (4) hours per day for more than ~~five (5)~~ seven (7) children of preschool age.

Section 1.6.F *Add the following new definition*

6. FLAG LOT--The width of a front lot line serving as the driveway shall be a minimum of twenty five feet (25') and shall not exceed one hundred fifty feet (150') in length without an approved turnaround, unless approved by the Fire Marshal, and shall access only one (1) lot.

Section 1.6 U *Add the last sentence to the item.*

1. Use—The activity or function that actually takes place or is intended to take place on a lot. If a use is similar in size, scope and intensity for a specific zoning land use classification and is not on the list of permitted uses, uses with conditions or a Special Use Permit, the Director may administratively classify that use for that particular land use classification providing the appropriate procedures are followed for that land use..

Section 1.6.V DEFINITIONS 'V' *Add the following new definition*

3. VINEYARD—An agricultural use of land for the commercial cultivation of grapes for winemaking, table grapes, raisins and non-alcoholic grape juice.

Section 1.6.W DEFINITIONS 'W' *Add the following new definition*

13. WINE TASTING ROOM—A facility that is located on the same property in which wine products are grown or processed and may be tasted and sold on the premise, provided that the property is assessed by the County Assessor's Office as agricultural land.

Article III. ZONING DISTRICTS AND SPECIAL USE PERMITS *SUP's required for 7 or more children and add wineries and/or wine tasting rooms*

3.1.A.1.d ER1M SPECIAL USE PERMITS

- 7. Day care center or child care center for five ~~(5)~~ seven (7) or more children
- 14. Wineries and/or wine tasting rooms

3.1.C.1.d ER3M SPECIAL USE PERMITS

- 6. Day care center or child care center for five ~~(5)~~ seven (7) or more children
- 13. Wineries and/or wine tasting rooms

3.1.C.3.d ER3H SPECIAL USE PERMITS

- 4. Day care center or child care center for five ~~(5)~~ seven (7) or more children
- 11. Wineries and/or wine tasting rooms

3.1.D.1.d ER3/4M SPECIAL USE PERMITS

- 5. Day care center or child care center for five ~~(5)~~ seven (7) or more children
- 13. Wineries and/or wine tasting rooms

3.1.E.1.d ER4M SPECIAL USE PERMITS

- 5. Day care center or child care center for five ~~(5)~~ seven (7) or more children
- 13. Wineries and/or wine tasting rooms

3.1.F.1.d ER5M SPECIAL USE PERMITS

- 5. Day care center or child care center for five ~~(5)~~ seven (7) or more children
- 11. Wineries and/or wine tasting rooms

3.1.G.1.d ER6 SPECIAL USE PERMITS

- 4. Day care center or child care center for ~~five (5)~~ seven (7) or more children
- 11. Wineries and/or wine tasting rooms

3.1.G.2.d ER6M SPECIAL USE PERMITS

- 4. Day care center or child care center for ~~five (5)~~ seven (7) or more children
- 11. Wineries and/or wine tasting rooms

3.1.I.1.d ER7 SPECIAL USE PERMITS

- 4. Day care center or child care center for ~~five (5)~~ seven (7) or more children

3.1.J.3.c EC1 SPECIAL USE PERMITS

- 11. Wineries and/or wine tasting rooms

3.1.M.4. EI1 SPECIAL USE PERMITS

- 8. Wineries and/or wine tasting rooms

Section 3.1 GENERAL DISTRICTS: PURPOSES AND USES

SPECIAL USE DEFINED *Add last sentence*

A special use is a use which is of an unusual or unique character and which may be offensive or incompatible in some cases within a zoning district. A special use requires review and approval by the ETZ Commission to determine impacts of the use on the surrounding area. Special Use Permits for accessory dwellings shall follow Article 7, Section 7.2 of this Ordinance.

3.1.K.4 EC2 SPECIAL USE PERMITS *Add the following use to item 12:*

3. All uses requiring a Special Use Permit under Section 3.1.J.3.c of this Ordinance	13. Drive-in theaters
4. Airport and heliports	14. Major facilities for generation of energy
5. Animal hospitals and clinics	15. Nursing or convalescent homes
6. Auditorium or assembly halls	16. Racetracks
7. Bus passenger terminals	17. Recreational vehicle parks
8. Cemeteries and crematoriums	18. Recycling purchase centers
9. Commercial kennels	19. Skating rink: roller or ice skating
10. Commercial parking garages	20. Stadiums or athletic fields: baseball, football, soccer, track or similar sports
11. Convention or exhibition halls	21. Mobile home units for security guards on temporary basis during construction period only
12. Dance halls or event centers	

Section 3.4 HOME OCCUPATION PERMITS *Delete original language and replace with new language.*

A home occupation is permitted in a residential district subject to the following criteria:

- ~~3.4.A — No person, other than members of the family residing on the premises, shall be engaged in such home occupation.~~
- ~~3.4.B — The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes and not more than twenty five (25) percent of the floor area, not to exceed five hundred (500) square feet, shall be used in the conduct of the home occupation.~~
- ~~3.4.C — There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation, and there shall be no open storage of business related equipment or supplies.~~
- ~~3.4.D — There shall be no commodities sold at the residence in connection with such home occupation. Flammable products are prohibited.~~
- ~~3.4.E — No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood.~~
- ~~3.4.F — No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors or electrical interference detectable in adjacent areas and no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises.~~
- ~~3.4.G — Signs shall not be permitted to advertise the business or its products.~~
- ~~3.4.H — Storage in connection with any home occupation shall be totally enclosed within the home. Storage shall not exceed ten (10) percent of the floor area and shall not exceed two hundred (200) square feet.~~
- ~~3.4.I — No personal physical service in connection with such home occupation requiring the client to come to the residence shall occur within or at the residence.~~
- ~~3.4.J — No home occupation shall be conducted in any accessory building.~~
- ~~3.4.K — All home occupations shall be required to obtain an annual business license from the county clerk.~~

A. The purpose of a home occupation permit is to allow limited commercial endeavors involving the manufacturing, purchase, sale, lease, or exchange of goods, and/or the provision of services, within a residential dwelling, or accessory building associated with a residential dwelling, in circumstances where the home occupation is secondary and incidental to the primary residential use of the residential dwelling, or accessory building associated with a residential dwelling, provided the home occupation does not alter the exterior of the property or materially affect the residential nature of the neighborhood. For purposes of this section, the term "residential dwelling" shall include any accessory building associated with a residential dwelling.

B. It is a violation of this ordinance for any person or entity having legal or equitable ownership, or physical custody of, or control over, a residential dwelling, to operate, or to allow the operation of, a home occupation within such residential dwelling, regardless of zoning district, without first obtaining a home occupation permit in compliance with the requirements of this ordinance. In addition to the home occupation permit itself, the applicant for such permit must obtain a business registration in compliance with the Business Registration Fee provisions of Doña Ana County Code Chapter 154 and must comply with all other codes and ordinances, including, but not limited to, those relating to parking, landscaping, drainage and building requirements.

C. A home occupation may be permitted in any residential dwelling, subject to the following requirements and limitations:

1. No more than five (5) people, in excess of the permanent occupants residing on the premises, shall be engaged, whether paid or not, in the home occupation. Additional people may be engaged in the home occupation only upon approval of a Special Use Permit, as provided for in Section 3.3.B.
2. The home occupation use of a residential dwelling or accessory building associated with the residential dwelling must be clearly incidental and subordinate to the primary residential use of the property, except for day care or child care services.
3. Any storage associated with the home occupation shall be completely enclosed within the residential dwelling, and such storage shall not exceed 600 square feet in area.
4. As a result of the home occupation, there must be no change in the outside appearance of the residential dwelling, or the premises, except as to signage described in the paragraph below, and there must be no other evidence of the conduct of a home occupation visible to the public.
5. Only one sign, one square foot in size, non-illuminated, free standing or mounted flush against the residential dwelling, shall be permitted which refers to the home occupation.
6. No equipment, material, or process shall be used in a home occupation that creates noise, glare, vibration, dust, fumes, odor or electrical interference detectable at the property line, or creates visual or audible interference with any radio, television receiver or computer on or near the premises, or that exceeds that which is normally found in a residential area.
7. There shall be no hazardous, explosive, highly flammable, combustible, corrosive, radioactive or other restricted materials used or stored on the premises of a home occupation beyond the amount normally kept at a residential dwelling for residential use. The use or storage of all such materials must comply with the Doña Ana County Fire Code.
8. The utility use associated with the home occupation must comply with the public utility rules and regulations applicable to residential dwellings.
9. Home occupation parking requirements:
 - a. On-street parking for customers or clients in connection with a home occupation shall be permitted only if the residential nature of the neighborhood remains unaffected.
 - b. No more than two customer or client vehicles shall be parked at or near a home occupation at any one time, except for instructional service, day care or child care services.
 - c. Vehicles larger than one ton in carrying capacity that are used in connection with a home occupation shall be stored or parked in a structure or other enclosure out of public view. Semi-trailer trucks, cabs

and trailers with weight limitations shall not be used or stored in conjunction with a home occupation.

d. A home occupation shall not cause the elimination of any off-street parking required by law for the occupants of the dwelling unit.

D. Home occupation permits may be approved for the following activity categories: Professional Office, Professional Service, Instructional Service, Home Artisan Business, Small Item Repair Service, and Day Care/ Child Care Service.

1. Professional Office includes offices for accountants, appraisers, architects, attorneys, contractors, engineers, financial planners, insurance agents, consulting services, real estate sales and similar office uses.

2. Professional Service includes home occupations involving computer programming and internet/website development, bed and breakfast establishments, beautician/hairdresser/barber services, direct distribution (Amway, Avon, Tupperware, etc.), maid services, mail order, massage therapy, ironing, pet grooming, telephone/fax answering, word processing and similar service uses. Beauticians/hairdressers/barbers and massage therapists licensed by the State of New Mexico shall be limited to one customer station per residential property for the home occupation.

3. Instructional Service includes educational tutoring, music instruction and similar instructional services. A maximum of five students may be at the dwelling at any one time.

4. Home Artisan Business shall include artist studios, cabinet making, dress making, engraving, furniture making, hobby crafting, jewelry making, sewing, tailoring, writing studios, small scale pickling/canning activity and similar uses.

5. Small Item Repair Service includes bicycle, computer, television, vacuum cleaner, locksmith, watch, tool, shoe and similar repair services.

6. Day Care/Child Care Service must be in compliance with state licensing regulations. Any Day Care/Child Care Service home occupation involving more than six children being at the residential dwelling at the same time shall be allowed only upon approval of a Special Use Permit, as provided for in Section 3.3 B.

E. The following activities shall be prohibited as home occupations: adult bookstores/video stores, adult amusement establishments, health and exercise facilities, motor vehicle repair services, tattoo/body piercing parlors, auto or truck repair, motorcycle repair, lawn mower repair, large appliance repair, internal combustion engine repair, and similar activities.

A-F. An activity not specifically enumerated under the activity categories listed above may be permitted by the Doña Ana County Community Development Director or designee if the applicant for a home occupation permit can establish that the proposed activity is reasonably similar in size, scope, use, and intensity as an enumerated home occupation activity.

G. Home Occupation Permit Approval.

1. Application. Application for a home occupation permit must be submitted to the Doña Ana County Community Development Department on an official form developed for that purpose along with payment of any application fee as established by resolution of the Extra-territorial Zoning Authority. The proposed home occupation activity shall be reviewed for compliance with all applicable statutes, ordinances, and regulations.
2. Review and scope. As part of the review and approval process, the applicant for a home occupation permit shall provide a site plan, which at a minimum shall consist of a scaled drawing showing lot line dimensions, the location, dimensions and setbacks of all structures, driveway access, parking areas, and proposed signage. In addition, the County may require an applicant for a home occupation permit to submit additional documentation describing in detail the equipment, materials, or processes to be used in connection with the home occupation, and to allow inspection of the premises proposed for home occupation in order to determine compliance with all applicable statutes, ordinances, and regulations. Applications for home occupation permits that do not meet the requirements of this section or the requirements of all other applicable statutes, ordinances or regulations shall be denied.
3. Business Registration. A home occupation permit, although approved, shall not be effective until the applicant obtains a Tax Identification Number from the State of New Mexico and a Doña Ana County business registration approved by the Doña Ana County Community Development Department.
4. Renewal. The business registration associated with a home occupation permit must be renewed on an annual basis on an official form developed by the Doña Ana County Clerk's Office for that purpose. A home occupation permit need not be renewed unless there is a material change in the home occupation activity, or its location, or there is a material increase in the permitted activity's size, scope, or intensity from that originally permitted.
5. Expiration. The home occupation permit shall remain in effect until such time as the home occupation activity is no longer in operation as originally approved, the annual business registration is not renewed or approved, or it is determined that a violation of the home occupation provisions of this ordinance or the provisions any other applicable statute, ordinance, or regulation has occurred, and the home occupation permit or business registration is revoked.

H. Revocation of home occupation permit; enforcement.

1. A home occupation permit may be revoked for the violation of, or noncompliance with, the provisions of this ordinance, or any other statute, ordinance, or regulation relevant to the home occupation activity. In addition, a home occupation permit may be revoked upon:
 - a. A non-permitted material change in home occupation activity, or a change in location, or a material increase in the permitted activity's size, scope, or intensity from that originally permitted.
 - b. A failure by the applicant to maintain a valid business registration or other license required for the home occupation.

7. The notice, demand, and revocation procedures set forth above, shall not be required when home occupation activities are being conducted without a home occupation permit in violation of this ordinance. Such violations may be enforced as any other violation of this ordinance may be enforced.

Section 7.1 ACCESSORY BUILDINGS *Reduce rear and side yard setbacks and increase building size to meet setback requirements, and add "or front yard setback" to item No. 5.*

7.1.A HEIGHT AND SETBACK REQUIREMENTS FOR ALL RESIDENTIAL DISTRICTS

1. A minimum distance of ten (10) feet, measured eave to eave, from the primary structure.
2. A minimum distance of ~~ten (10)~~ five (5) feet from side and rear property lines for any accessory building of six hundred (600) square feet or less gross floor area.
3. Accessory buildings larger than ~~four~~ six hundred (400 600) square feet or taller than fifteen (15) feet shall meet all minimum setback requirements
4. A maximum height up to the height of the primary structure, not to exceed of twenty five (25') feet. ~~shall be allowed.~~
5. No accessory building shall project beyond the front of the primary dwelling unit or front yard setback for all lots that are one-half (1/2) acre or less, except as herein provided.

Passed, Approved, and Adopted on the ____ day of _____ by:

THE EXTRA-TERRITORIAL ZONING AUTHORITY

Karen G. Pérez, Chairwoman (Aye/Nay)

Miguel G. Silva, Vice-Chairman (Aye/Nay)

Nathan P. Small, Member (Aye/Nay)

Scott A. Krahling, Member (Aye/Nay)

Leticia Benavidez, Member (Aye/Nay)

ATTEST:

Lynn J. Ellins
County Clerk