FAQ

Home Uses & Occupations

Home Occupations in General:

Can I operate a business in my home?

Generally, yes, provided that the business meets the New Castle County Unified Development Code (UDC) definition of a permitted home occupation and the conditions of Section 40.03.420 of the UDC are met. The property owner, tenant and prospective business operator should also check for deed restrictions or covenants that might limit or prohibit businesses conducted within or from the home. Compliance with Section 40.03.420 does not relieve the property owner, tenant, or business owner of the responsibility to obtain all the other necessary licenses, permits, and clearances (federal, state, or local) that might be required to operate the type of business undertaken. Call the Delaware Economic Development Office (577-3156) or the Small Business Development Center (831-1555) regarding state and federal requirements.

What is a Home Occupation?

As defined by Section 40.33.221(B) of the UDC, a home occupation means any service, profession, occupation, or trade which is conducted within a residential dwelling and which does not change the essential character of the residential use. In essence, the business must be conducted in a manner such that the dwelling housing the occupation is indistinguishable from dwellings with no business use. In Arden, Ardentown, and Ardencroft ("the Ardens") the home occupation can be conducted in the dwelling and any accessory structure on the same lot.

Special types of Residential Home Uses include the Home Occupation, the Home Business, Family Day Care Home, Large Family Day Care Home, and Roomers & Boarders. The Home Business is essentially a subset of the home uses defined as Home Occupations.

Can I operate a retail store business or restaurant in my home?

No. Use of the home as a retail store (operation of a fixed point-of sale location designed to attract walk-in customers) which purchases, displays and stocks merchandise for resale to the public is considered a commercial retail use rather than a legitimate home occupation. Similarly, establishment of a business in the home to prepare and serve food and beverages on-premises or as carryout to attract walk-in customers is considered a commercial use. Generally, retail businesses and restaurants are not permitted in residential zoning districts in New Castle County.

What is the difference between operating a bed & breakfast in my home and having boarders and roomers in my home?

Neither a boarding or rooming house nor a bed and breakfast is considered a home occupation. A home having no more than three (3) non-transient boarders or roomers is considered a permitted accessory

residential use. Operation of a bed and breakfast is a commercial use and is permitted within residential zoning districts under certain conditions.
The conditions governing legitimate use of the home for taking in boarders and roomers are (Section 40.03.420,D):

- The owner must reside in the dwelling.
- No display (sign) or advertising on the premises.
- Roomers and Boarders must be non-transient, meaning that they reside as a roomer or boarder for not less than forty-five (45) days.
- 1.25 parking spaces per guestroom (Tables 40.03.110 & 40.03.522).

A boarding and rooming house which does not meet these conditions would be considered a commercial lodging use. Commercial lodging facilities are not permitted in residential zoning districts outside of hamlet and village developments.

The definition of a bed and breakfast and the conditions for the location and operation of such are contained in Sections 40.33.240, C and 40.03.315 of the UDC. Also see FAQ 3 entitled “Bed & Breakfast.” Establishment of a Bed & Breakfast requires the submission of at least a site plan prior to issuance of either a building permit or certificate of use.

Can I operate a stress reduction and massage therapy business in my home?

Yes, provided the conditions of Section 40.03.420 are met and those providing the massage service are either graduates of a recognized training school in massage therapy or belong to a nationally recognized massage therapy association. Establishments not meeting one of the latter two conditions are classified as massage parlors. Massage parlors are not allowed in residential zoning districts (Section 40.33.204,D and Tables 40.03.110 & 40.03.210, and Section 40.03.313).

Can I operate a catering business from my home?

Yes, provided the conditions of Section 40.03.420 are met. Appropriate State Department of Health and Department of Agricultural regulations for the preparation, sale and distribution of food and agricultural products should be observed and any clearances, licenses, or permits required by these agencies should be obtained and maintained.

Can I operate an Internet Business or E-commerce Business from my home?

Generally yes, provided the conditions of Section 40.03.420 are met. Any business conducting business across state lines, however, may be subject to federal regulation. The operator of any business preparing and selling food or agricultural products via the Internet should investigate and comply with all applicable state and federal laws and regulations pertaining to these services and products.

Do I need a building or use permit to operate a Home Occupation?

Generally, no, unless the conduct of the business requires a structural change, or significant modification or expansion of plumbing, heating, ventilation, or electrical systems. Note that structural alterations or enlargements made to the dwelling unit for the primary purpose of conducting the home use may disqualify the home use as a permitted home occupation. Some uses, such as Large Family Day Care Home, have special requirements that might require a certificate of use or other reviews, certifications or inspections from the Department of Land Use.

In cases, where non-resident or non-family member employees or contractors are to be involved on-site, a Conditional Home Occupation Agreement (CHOA) must be completed and filed with the New Castle County Code Enforcement Office.

CONDITIONS FOR RESIDENTIAL HOME OCCUPATION USES FROM SECTION 40.03.420(A) OF THE UDC:

What are the restrictions related to the number of employees I can have engaged in my home occupation?

The owner of the home occupation must be a full-time resident of the dwelling unit and can not employ any individuals other than family members who also are full-time residents of the dwelling unit. The following two exceptions are allowed:

> First, additional non-resident, on-site employees or independent contractors are permitted if the operator executes a Conditional Home Occupation Agreement (CHOA). Upon execution of the Conditional Home Occupation Agreement with the County, the operator may employ up to two (2) full-time non-resident employees or independent contractors at a time or up to four part-time employees or independent contractors, provided only two are on the premises at one time. The form is submitted to the County Code Enforcement Office. Any changes in the information on the CHAO must be in writing and mailed or otherwise submitted to the County Code Enforcement Office within thirty (30) days of the change. A Conditional Home Occupation Agreement is not required for home occupations, professional office or studios, which at the time of passage of this ordinance (05/08/2000) legally employed no more than two persons to provide secretarial, clerical or similar assistance.
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> Second, a home occupation which provides a service that occurs off-site may have additional employees, provided such employees meet and work off-site and not at the subject residence.

Exception: In the Ardens the owner of the home occupation need only be a full-time resident of the Ardens and may employ two (2) full-time resident employees or independent contractors. Two additional part-time/seasonal employees or independent contractors can be employed provided that the appropriate Village Secretary is notified in writing on the Home Occupation Village Notification Form. Any changes to the arrangement must be done in writing to the Village Secretary within thirty (30) days of the change.

Can customers and clients come to my house?

Yes, the operator may meet with customers and clients at the site **provided** that the frequency and consistency of traffic to and from the site in relation to the home occupation does not interfere with the community's comfort, safety, or enjoyment of the neighborhood around the subject property as a residential area or create a visual or traffic annoyance to persons of normal sensibilities such that a public nuisance is created. High volume visits and traffic to and from the site during the hours of 8:00 a.m. until 6:00 p.m. is evidence that the home occupation is not indistinguishable from other dwellings and creates a public nuisance in the residential neighborhood.

Can the Home Occupation be conducted in an accessory building?

Only in Arden, Ardentown, and Ardencroft; otherwise, no. It must be conducted within the dwelling unit. No home occupation shall be conducted outside the dwelling unit. In any case, the residential character of the buildings must be maintained.

How much of the home can be dedicated to the home occupation?

The total area used to accommodate the home occupation must not exceed twenty-five (25) percent of the total gross floor area (GFA) of the principal residential dwelling. Exception: in the Ardens a maximum of 1,000 SF of GFA may be used for the home occupation. The latter includes the cumulative total of all building space dedicated to the home occupation.

Can the home be altered to accommodate the home occupation?

Generally, no. No structural alterations or enlargements can be made to the dwelling unit for the primary purpose of conducting the home occupation.

What are the parking requirements?

Adequate on-site, off -street parking must be provided for all employees, customers, clients and/or pupils. The principal driveway serving the residence must act as the parking area. Only the principal driveway may be used for parking in conjunction with the home occupation.

Are there restrictions on toxic or hazardous materials?

Yes. Hazardous, toxic, explosive, flammable, radioactive or other restricted materials used, sold or stored on the site in connection with the home occupation must conform to Chapter 6 of the New Castle County Code for residential uses. Call 395-5400 for further information.

Can materials, supplies, goods, or equipment be stored outside?

No. The outdoor display or storage of materials, goods, supplies or equipment related to the home occupation is prohibited. Exception: In the Ardens, outside storage is permitted, but stored items must not be visible from roadways or from beyond the leasehold.

Are there restrictions regarding deliveries and pickups?

Yes. Truck deliveries or pick-ups of supplies or products, associated with the home occupation must occur only within the hours of 8 a.m. and 7 p.m. Vehicles used for delivery and pick-up are limited to those normally servicing residential neighborhoods. Regular or frequent tractor-trailer delivery is prohibited.

Are there restrictions on displays and signs?

Yes. Signs that advertise or identify the home occupation are prohibited. The display of any products or operations that would create external evidence of the operation of the home occupation is prohibited. No marked service vehicle, trailer or other equipment used in conjunction with the home occupation can be parked on the property or contiguous street right-of-way so as to identify, advertise or otherwise attract attention to the home occupation. Exception: In the Ardens, one non-illuminated sign of no more than 1 square foot in size can be attached to the dwelling or accessory structure, and a single two axle marked service vehicle can be parked on the lot.

Can manufacturing, repairing, or mechanical work be performed?

Yes, but only within the dwelling unit. No manufacturing, repairing or other mechanical work shall be performed outside the dwelling unit. When such activity is conducted inside the dwelling unit, it must be conducted in such a way that no noise, heat, glare, odor, vibration, electromagnetic interference or smoke shall be perceptible at or beyond the property line. Exception: In the Ardens, manufacturing, repairing, and other mechanical work may be performed outside the structure housing the home occupation as long as they are conducted in a way that no noise, heat, glare, odor, vibration, or electromagnetic interference causes annoyance to persons of normal sensibilities by creating a public nuisance.

What about Pre-existing Nonconforming Home Occupations?

Legal home occupation uses that become nonconforming following adoption any changes to Chapter 40 of the County Code may continue to remain as a nonconforming situation and, pursuant to Article 8 of

Chapter 40, any change in title or of right to possession shall not affect the continuation of the nonconforming situation. As set forth in Article 8, the status of any nonconforming situation may be determined by the Department after public notice.

Can I apply for a variance from the home occupation provisions of Section 40.03.420(A)?

Yes, however, any application for a variance from the provisions of this Section 40.03.420(A) must be treated as an application for a use variance. The standards and processes for granting a use variance are more rigorous than for an area, dimensional or situational variance. See the publication entitled *Board of Adjustment of New Castle County Informational Handbook* or call 395-5471 for more information.

Other Accessory Home Uses:

Can I run a day care in my home?

Yes, provided that the applicable conditions of Sections 40.03.420,B and 40.03.420,C are met. Operating a day care in the home is considered a home use, not a home occupation. The conditions of Section 40.03.420(A) do not apply to the Family Day Care Home and the Large Family Day Care Home uses, but rather separate standards for each have been established (Sections 40.03.420, B & C). The Family Day Care Home and the Large Family Day Care Home uses should be distinguished from the day care center use. The day care center use is either a building completely dedicated to the day care of children or adults, or that portion of commercial, office, institutional, or industrial structure dedicated to the day care of children or adults. Call 892-5800 (Delaware Family Services Division) for state licensing information and requirements. For further guidance regarding County requirements for child day care in the home see the FAQ entitled "Child Day Care."

DEFINITIONS AND NOTES ON RELATED CONCEPTS:

Day Care, Family and Large Family. A facility in a private home or non-residential setting that is operated by one (1) or more persons duly licensed or qualified to be licensed by the State for the purpose of providing child day care for one (1) to not more than twelve (12) children at any one time, who are not relatives of the day care provider (NAICS 62441). The term family day care home and large family day care home is further defined and limited by the State of Delaware, Department of Services for Children, Youth and Their Families, Office of Child Care Licensing regulations.

Terms related to designated Village and Hamlet Type Developments, and Farmsteads in S, SE, and SR zoning districts:

Home Business. This is a business operated out of homes that permits the employment of up to two (2) unrelated individuals in the home. Uses shall be limited to office or service businesses and sales; wholesale or retail is prohibited. Farm workers are not included.

Cottage Industry:

1. An industrial or intensive use(s) conducted on a lot with a residential dwelling unit. Up to six (6) employees may be employed in addition to family members. Farm workers are not included.

2. This use includes, but is not limited to, businesses related to agriculture, trucking operations, small automotive repair shops, septic system service, well service, carpentry, upholstery, woodworking, potteries, glassworks and other similar uses. It includes screened outdoor storage areas.

The special design criteria of Article 25 apply to Home Business and Cottage Industry Uses in Village and Hamlet Developments.

A *Farmstead* is a residential-agricultural unit in which the land is used for agriculture and residential purposes by the owner/operator of the agricultural operation. The minimum size farmstead lot or site in the Suburban (S) and Suburban Reserve (SR) zoning districts is 50 acres, but just 5 acres in a Suburban Estate (SE) zoning district.

See Article 3 (Tables 40.03.110 & 40.03.210) and Article 4 (Table 40.04.110) of the UDC for further information regarding the districts in which home occupation, home business, and cottage industry uses are permitted and the conditions under which they are permitted.

The FAQ Series only summarizes or highlights portions of the New Castle County Unified Development Code (UDC). In all applications, the UDC must be directly consulted. The language in the UDC prevails over the FAQ.

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