

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
ZONING TEXT AMENDMENT REPORT (#FZTA-14-01)
UPDATED DECEMBER 31, 2014

A report to the Flathead County Planning Board and Board of County Commissioners for a text amendment to the Flathead County Zoning Regulations. The purpose of the request is to revise the performance standards and definitions regarding home occupations in Section 5.06, 7.09.020 and 7.19.045 of the Flathead County Zoning Regulations.

The Flathead County Planning Board held a public hearing on the proposed zoning text amendment on September 10, 2014 and November 12, 2014 and will conduct a subsequent public hearing on the proposed zoning text amendment on January 14, 2014 in the 2nd Floor Conference Room of the Earl Bennett Building located at 1035 First Avenue West in Kalispell. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration. In accordance with Montana law, the Commissioners will hold a public hearing on the proposed zoning text amendment.

Documents pertaining to the zoning text amendment are available for public inspection in the Flathead County Planning and Zoning Office located in the Earl Bennett Building at 1035 First Avenue West, in Kalispell. Prior to the Commissioner's public hearing, documents pertaining to the zoning text amendments will also be available for public inspection in the Flathead County Clerk and Recorders Office at 800 South Main Street in Kalispell.

I. APPLICATION REVIEW UPDATES

A. Planning Board

Update September 11, 2014

On September 10, 2014 the Flathead County Planning Board held a public hearing on the proposal and the Board voted 7-0 to adopt the staff report as Findings of Fact and voted 7-0 to forward a recommendation for approval to the Board of County Commissioners. Details of the Board's actions and the recommended Findings of Fact are included on the attached Planning Board Addendum to this report.

Update November 12, 2014

On November 12, 2014 at the regularly scheduled meeting the Flathead County Planning Board held a public hearing to discuss the proposal and the board decided to make revisions to the definition of 'Home Occupation' and allow for additional vehicle trips in AG-80, AG-40, AG-20, SAG-10, SAG-5, R-2.5, R-1 or R-2 with a conditional use permit. A definition for 'Trip' will also be added to the proposed text amendment. The Planning Board decided to re-notice their revised draft text amendment and hold a subsequent public hearing on the current proposed amendment on January 14, 2015.

B. Commission

Update September 18, 2014

On September 18, 2014 during the Authorization to Publish Notice the Flathead County Commissioners, Commissioner Krueger discussed the appropriateness of 16 vehicle trips in Agricultural and Suburban Agricultural zones. Commissioner Krueger believes 8 and 16 vehicle trips for residential (the way it is currently proposed) is appropriate but would like to see allowing for more trips with a CUP in AG and SAG zones. Krueger made a motion to send the text amendment for home occupations back to the PB, the motion was seconded and passed 3-0, therefore the proposed text amendment to home occupations was scheduled for the November 12 Planning Board.

II. GENERAL INFORMATION

A. Applicant/Petitioner

Flathead County Planning Board

B. Background to Requested Amendments

The Flathead County Planning Board has held several publicly noticed workshops intended to evaluate existing language and/or provisions contained in the Flathead County Zoning Regulations (FCZR). The publicly initiated text amendment regarding 'dwelling units, accessory (ADU)' and home occupations was the result of workshops which occurred between March 2013 and March 2014. The Planning and Zoning Department has been approved by the Planning Board and the Board of County Commissioners to evaluate the regulations and to generate and process requests for amendments to the regulations.

A joint Planning Board and Commissioner workshop was held on March 13, 2013 to discuss projects for fiscal year 2013, it was determined at that time to look at updating the Flathead County Zoning Regulations. On August 14, 2013 at the regularly scheduled Planning Board meeting, staff handed out a copy of the list of zoning issues that have been brought during previous Planning Board meetings, staff's daily interaction with the public, administrative fixes, previous complaints, and previous attempts to update the zoning regulations. On October 23, 2013 staff handed out research to the Planning Board regarding home occupations and accessory dwelling units. During the regularly scheduled Planning Board meeting on February 12, 2014 the Planning Board and staff discussed what topics to address concerning the update to the regulations the discussion centered around home occupations, wedding facilities, ADUs and vacation rentals by owner (VRBOs). On February 24, 2014 during the Planning Board workshop the board and staff discussed specific number of employees allowed for a home occupation, how to handle traffic issues (doubling the allowed traffic), utilities (specifically sewer), and the difference between a home occupation and a second principle use. During the regularly scheduled Planning Board hearing on March 12, 2014 the Planning Board discussed the draft text amendment based on wording from the previous meeting and to move forward with a text amendment to home occupations.

On September 10, 2014 the Flathead County Planning Board held a public hearing on the proposal and forwarded a recommendation for approval to the Board of County Commissioners. On September 18, 2014 during the Authorization to Publish Notice the Flathead County Commissioners, Commissioner Krueger made a motion to send the text amendment for home occupations back to the PB, the motion was seconded and passed 3-0, the proposed text amendment to home occupations was then scheduled for the November 12 Planning Board. On November 12, 2014 at the regularly scheduled meeting the Flathead County Planning Board held a public hearing to discuss the proposal and the board decided to make revisions to the definition of 'Home Occupation', allow for additional vehicle trips in AG-80, AG-40, AG-20, SAG-10, SAG-5, R-2.5, R-1 or R-2 with a conditional use permit and to add a definition for 'Trip' to the proposed text amendment. In an effort to clarify the proposal the Planning Board decided to re-notice and hold a subsequent public hearing on the current proposed text amendment on January 14, 2015, effectively starting the process over for the proposed text amendment. From this point

forward this staff report will discuss the proposed text amendment as revised by the Planning Board on November 12, 2014.

C. Sections Proposed for Amendment

The amendment is addressed as follows:

- i. A summary of the general character of and reason for the proposed amendment;
- ii. Listing of the specific section being amended and the actual language of the proposed amendment. Under “Proposed amendment” the language is shown as it appears in the current regulations, with proposed additions *italicized* and shaded gray and proposed deletions ~~stricken~~ and shaded gray.

D. Criteria Used for Evaluation of Proposed Amendment:

Amendments to the text of the Flathead County Zoning Regulations are processed in accordance with Section 2.08 of the Flathead County Zoning Regulations. The criteria for reviewing amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

E. Compliance With Public Notice Requirements:

Legal notice of the Planning Board September 10, 2014 public hearing on this application was published in the July 27, 2014 edition of the Daily Interlake. Legal notice of the Planning Board January 14, 2014 public hearing on this application was published in the December 28, 2014 edition of the Daily Interlake. Public notice of the Board of County Commissioners public hearing regarding the zoning text amendment will be physically posted within the County according to statutory requirements found in Section 76-2-205 [M.C.A]. Notice will also be published once a week for two weeks prior to the public hearing in the legal section of the Daily Interlake. All methods of public notice will include information on the date, time and location of the public hearing before the Flathead County Commissioners on the requested zoning text amendment.

F. Agency Referrals

No agency referrals were sent regarding these text amendments, as they apply to a broad geographic area and not a specific property requiring evaluation by a local or state agency.

III. COMMENTS RECEIVED

A. Public Comments

All comments received prior to and at the November 12, 2014 public hearing have been reviewed and considered by the Planning Board and are the basis for some of the Planning Boards November 12th revisions to the text amendment. No additional comments have been received since the November 12, 2014 Planning Board public hearing. All written comments received to date are contained in the public record and are available for public inspection during normal business hours.

It is anticipated any member of the public wishing to provide comment on the proposed zoning text amendment may do so at the Planning Board public hearing scheduled for January 14, 2015 and/or the Commissioner’s Public Hearing. Any written comments received following the completion of this report will be provided to members of the

Planning Board and Board of Commissioners and summarized during the public hearing(s).

B. Agency Comments

No agency referrals were sent regarding these text amendments, as they apply to a broad geographic area and not a specific property requiring evaluation by a local or state agency.

IV. EVALUATION OF PROPOSED AMENDMENTS

i. General Character of and Reason for Amendment

The purpose of the request is to revise the performance standards and definitions regarding home occupations in Section 5.06, 7.09.020 and 7.19.045 of the Flathead County Zoning Regulations. This proposed amendment is to amend the performance standards and definition for ‘Home Occupation’ and add a definition for “Trip.” The amendment would remove the requirement of only one vehicle trip at a time, allow for no more than sixteen vehicle trips all day and allow for a conditional use permit for a home occupation to exceed sixteen vehicle trips per day but not more than thirty-two vehicle trips in a day within AG-80, AG-40, AG-20, SAG-10, SAG-5, R-2.5, R-1, or R-2 districts. The amendment would remove the last sentence from the definition of “Home Occupation.” Adding a definition for ‘Trip’ will clear up any misperceptions on what constitutes a trip.

This amendment is being proposed because the Planning Board has indicating that removing the limitation of one vehicle at a given time would not adversely impact a neighborhood, limiting a home occupation to vehicle traffic of no more than eight per day limits the ability to grow a business and that reasonable limits are needed so as to not change the character of the neighborhood.

ii. Proposed Amendment

The proposed amendment to amend Section 5.06, 7.09.020 and 7.19.045 FCZR pertaining to the Home Occupation would amend vehicle traffic criteria as follows:

5.06.020(1)(E) The home occupation shall not generate pedestrian or vehicle traffic in excess of that which is characteristic of the neighborhood in which it is located. Vehicle traffic would not be increased by ~~more than one (1) at a given time or~~ by more than ~~eight (8) sixteen~~ (16) vehicle trips all day.

5.06.020(2)(C) *Vehicle traffic that exceeds sixteen (16) vehicle trips but less than thirty-two (32) vehicle trips all day.*

7.09.020 Home Occupation – Any use conducted entirely within the dwelling and carried on by the members of the family which use is clearly incidental and secondary to the dwelling for dwelling purposes and does not change the character thereof and in connection therewith are no commodities sold from the premises except that which is produced thereof, except as provided for in Section 5.06. Such uses may include, but are not limited to, art and/or photography studios, computer programming, insurance sales, and handicrafts provided that the use does not involve more

than one-third of the total square footage of the dwelling. ~~The conducting of a hospital, barbershop, beauty shop, tearoom, tourist home, animal hospital, or other traffic-generating use shall not be deemed to be a home occupation.~~

7.19.045 *Trip – A single or one-direction vehicle movement originating or terminating (exiting or entering) at a given location. For example a vehicle arriving at home photography studio, staying for an hour and then leaving the studio would consist of two trips.*

iii. Review of Proposed Amendment (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)

1. Whether the proposed text amendment is made in accordance with the Growth Policy and Neighborhood Plan.

The Growth Policy does not provide specific guidance related to home occupations. **Goal 2** states, “*Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.*” The proposed amendment is made in accordance with the applicable goal of the Growth Policy as it would preserve the rights of landowners to put their properties to reasonable use with review for higher traffic.

Staff researched the various neighborhood plans regarding the compliance of the proposed amendment and found that the neighborhood plans listed below specifically reference the topic of the proposed text amendment. The proposed amendment is made in accordance with the applicable neighborhood plans:

❖ **Kalispell City-County Master Plan**

- **6(g):** *Maintain the character of the single-family neighborhoods.*
 - Response: The performance standards for a home occupation would still apply which serve to preserve the character of a neighborhood.

❖ **Rogers Lake Neighborhood Plan and Development Code**

- *Providing for home-based business.*
- *Prohibit the commercial establishments on or in the neighborhood of the lake, development of facilities (such as marinas, recreational equipment rental, recreational vehicle parks or campgrounds, and public concessions) that would promote high-impact use of the lake, the lakeshore and or the surrounding area.*
- *Allow for home-based businesses such as bed and breakfast, guest ranches, and home offices.*
 - Response: Bed and breakfasts, guest ranches and home offices would still be permitted within the Rogers Lake Neighborhood Plan area. The performance standards for a home occupation would still apply which serve to preserve the character of a neighborhood and limit non-compatible commercial uses in the Rogers Lake zone.

- ❖ South Woodland/Greenacres Neighborhood Plan
 - *Goal 4: Maintain the rural character of the residential areas by limiting duplexes, apartment and businesses to established areas.*
 - Response: The performance standards for a home occupation would still apply which serve to preserve the character of a neighborhood.
- ❖ Whitefish City-County Master Plan
 - *5.2: Conserve the character and stability of neighborhoods.*
 - *5.10: In order to protect residential neighborhood integrity, home occupations which occur in residential areas should be done in such a manner as to show no visible exterior aspects or impacts of the business or services. This would include limited exterior signage, no outside storage, unobtrusive parking, and minimal noise, smoke or fumes.*
 - Response: The performance standards for a home occupation would still apply which serve to preserve the character of a neighborhood.
- ❖ West Valley Neighborhood Plan
 - *Permit home occupations;*
 - Response: Home occupations would still be permitted within the West Valley Neighborhood Plan area. The West Valley Neighborhood Plan covers areas zoned West Valley as well as zones with the West Valley Overlay. The West Valley zone has separate definitions for home occupations and home based businesses and this text amendment would not apply to the West Valley zone but would apply to areas zoned West Valley Overlay.

The Ashley Lake Neighborhood Plan and the North Fork Neighborhood Plan reference home occupations or a related topic but zoning district have been implemented in those plan areas that have a separate definition for home occupations and home-based businesses therefore this text amendment would not apply to those neighborhood plans.

Finding #1: The proposed amendment appears to generally comply with the Flathead County Growth Policy, the Kalispell City-County Master Plan, Rogers Lake Neighborhood Plan and Development Code, West Valley Neighborhood Plan, Whitefish City-County Master Plan and South Woodland/Greenacres Neighborhood Plan because the performance standards for a home occupation would still apply which serve to preserve the character of a neighborhood, home occupations have a separate definition within most of the West Valley Neighborhood Plan area and bed and breakfasts, guest ranches and home offices would still be permitted within the Roger Lake Neighborhood Plan area.

2. Whether the proposed text amendment is designed to:

a. Secure safety from fire and other dangers;

Removing the restriction of one vehicle trip at a given time and allowing for up to sixteen vehicle trips in a day without a conditional use permit and up to thirty-two vehicle trips in a day with a conditional use permit, adding a

definition of ‘Trip’ and modifying the definition of ‘Home Occupation’ appears to not have a negative impact on safety from fire and other dangers because home occupations would still be required to meet the other performance standards and the bulk and dimensional requirements for the underlying district would still apply. Home occupations that exceed sixteen vehicle trips per day would be required to undergo a subsequent review process. The bulk and dimensional requirements within the zoning designations have been established to secure safety from fire and other dangers.

b. Promote public health, public safety, and general welfare;

Public health, safety, and general welfare will not be impacted by the proposed amendment because a home occupation is already a permitted use in most zoning use districts. All six of the other performance standards for a home occupation would still be required to be met and the definition would continue to apply, and a subsequent review would be required if the home occupation exceeds sixteen vehicle trips per day. The performance standards for a home occupation would still require that:

- *“No home shall be conducted in such a manner which will be detrimental to the residential use of said residence or cause a nuisance to surrounding residences, because of vibrations, noise, dust, smoke, odor, interference with radio and television reception, or other factors.”*
- *“No home occupation shall generate as a by-product for disposal or cause to be dumped any hazardous waste including chemical and cleaners, other than the volume and types that would be normally generated by a typical single-family home.”*

The performance standards were established to ensure the public health, public safety and general welfare of residence in the vicinity of a home occupation. If an applicant fails to demonstrate these standards can be met, then a home occupation cannot be permitted.

Finding #2: The proposed amendment to the Flathead County Zoning Regulations was found to comply with and have no adverse impact on safety from fire and other dangers and public health, public safety and general welfare because home occupations that exceed sixteen vehicle trips per day would be required to undergo a subsequent review process, the bulk and dimensional requirements within the zoning designations have been established to secure safety from fire and other dangers and all of the other performance standards for a home occupation would still be required to be met, some of which protect public health, public safety and welfare.

c. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

The purpose of the request is to revise the performance standards for home occupations regarding traffic and could potentially impact transportation. The

proposed amendment for allowing increased traffic is not likely to impact water, sewer, schools, parks, and other public requirements.

The proposed amendment would eliminate the requirement of one vehicle trip at a time on the subject property and add the ability for property owners to apply for a conditional use permit if they are going to exceed the proposed amended traffic threshold of sixteen vehicle trips in a day but not exceed thirty-two vehicle trips in a day. Previously the provision of vehicle traffic of no more than eight all day could have been interpreted one of two ways:

1. That a trip was one vehicle entering and the same vehicle exiting the property or,
2. One vehicle entering the property or the same vehicle leaving the property.

Adding a definition for ‘Trip’ will remove any misperceptions on what constitutes a trip and make it clear that a trip is a single or one-direction vehicle movement originating or terminating (exiting or entering) at a given location not both. Because of this traffic will likely not increase unless a conditional use permit is sought to exceed sixteen vehicle trips in a day.

The proposed amendment would allow for an increase in traffic with a conditional use permit could impact transportation; however, a subsequent review would be required for a home occupation to exceed sixteen vehicle trips per day in order to determine if the maximum thirty-two vehicle trips per day would be appropriate for the given property. The conditional use permit review would determine if an adequate provision of transportation exists for the proposal and could be conditioned to ensure adequate provision of transportation.

Finding #3: The proposed amendment was found to have no impact on water, sewerage, schools, parks and other public requirements because it would only allow for increased traffic in association with a home occupation.

Finding #4: Amending the Flathead County Zoning Regulations performance standards and definition for home occupations and adding a definition for trips was found to have minimal impact on transportation because a subsequent conditional use permit review would determine if adequate provision of transportation exists for the proposal and the conditional use permit could be conditioned to ensure adequate provision of transportation.

3. In evaluating the proposed text amendment(s), consideration shall be given to:

a. The reasonable provision of adequate light and air;

A home occupation is currently a permitted use in many of the zoning designations, and not being added to any established zoning designations. The proposed amendment would only modify the traffic criteria for a home occupation, and bulk and dimensional requirements for the underlying zoning would still apply. Bulk and dimensional requirements within the zoning designations have been established to ensure a reasonable provision of light and air.

Finding #5: The proposed amendment was found to have no adverse impact on the reasonable provision of light and air because bulk and dimensional requirements for the underlying zoning would still be applicable and those requirements have been established to ensure a reasonable provision of light and air.

b. The effect on motorized and non-motorized transportation systems;

The purpose of the request is to revise the performance standards for home occupations regarding traffic and could impact motorized and non-motorized transportation. The proposed amendment to remove the requirement of no more than one vehicle trip at a given time would likely not change the character of the district and its peculiar suitability for uses because home occupations would still be required to provide for off street parking and maximum daily trips would still be regulated.

Previously the provision of vehicle traffic of no more than eight all day could have been interpreted one of two ways:

1. That a trip was one vehicle entering and the same vehicle exiting the property or,
2. One vehicle entering the property or the same vehicle leaving the property.

Adding a definition for ‘Trip’ will remove any misperceptions on what constitutes a trip and make it clear that a trip is a single or one-direction vehicle movement originating or terminating (exiting or entering) at a given location not both. Because of this traffic will likely not increase unless a conditional use permit is sought to exceed sixteen vehicle trips in a day.

The proposed amendment would allow for an increase in traffic with a conditional use permit could impact motorized and non-motorized transportation however a subsequent conditional use permit review would be required for a home occupation to exceed sixteen vehicle trips per day in order to determine if the maximum thirty-two vehicle trips per day would be appropriate for the given property. The conditional use review would determine if the home occupation has an acceptable effect on motorized and non-motorized transportation exists for the future proposals and could be conditioned to minimize adverse effects on motorized and non-motorized transportation.

Finding #6: The proposed amendment to the Flathead County Zoning Regulations was found to have no negative effect on motorized and non-motorized transportation because future conditional use permit reviews would determine if home occupations have an effect on motorized and non-motorized transportation and the conditional use permit could be conditioned to ensure minimal impact on motorized and non-motorized transportation.

c. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);

Staff looked at each of the Flathead County’s three incorporated cities’ growth policies for guidance on compatibility with urban growth on the proposed

amendment. The City of Columbia Falls Growth Policy states as a policy, *“Allow low-impact home occupations which do not show any visible exterior indication and do not undermine a neighborhood’s residential character.”* The City of Kalispell Growth Policy states as a policy, *“Allow low-impact home occupations that do not undermine a neighborhood’s residential character.”* The City of Whitefish Growth Policy only discusses home based businesses in relation to day cares.

The Planning Board has indicated that allowing sixteen trips per day would limit the ability for a business to grow, but requiring a conditional use permit for up to thirty-two vehicle trips per day could protect the character of a residential neighborhood through a conditional use review. By requiring home occupations with sixteen to thirty-two vehicle trips per day to obtain a conditional use permit, the Board of Adjustments would be able to ensure the proposal would not be out of character with the neighborhood. The Planning Board feels that removing the limitation of one vehicle trip at a given time would not adversely impact a residential neighborhood because the use would still be required to meet applicable parking requirements. It appears that the proposed text amendment would be compatible with urban growth in the vicinity of cities and towns as it would not undermine a neighborhood’s residential character.

Finding #7: This proposed text amendment would be compatible with the Growth Policy of Columbia Falls and Kalispell because the Planning Board has determined that the proposed text amendment would not be out of character for a residential neighborhood and a subsequent conditional use permit review would be required for home occupations with sixteen to thirty-two vehicle trips per day which could ensure that such a proposal is not out of character with a neighborhood.

d. The character of the district(s) and its peculiar suitability for particular uses;

The proposed amendment to remove the requirement of no more than one vehicle trip at a given time would likely not change the character of the district and its peculiar suitability for uses because home occupations would still be required to provide for off street parking and maximum daily trips would still be regulated. Previously the provision of vehicle traffic of no more than eight all day could have been interpreted one of two ways:

1. That a trip was one vehicle entering and the same vehicle exiting the property or,
2. One vehicle entering the property or the same vehicle leaving the property.

Adding a definition for ‘Trip’ will remove any misperceptions on what constitutes a trip and make it clear that a trip is a single or one-direction vehicle movement originating or terminating (exiting or entering) at a given location not both. Because of this traffic will likely not increase unless a conditional use permit is sought to exceed sixteen vehicle trips in a day.

Removing the last sentence from the definition of ‘Home Occupation’ that reads, “The conducting if a hospital, barbershop, beauty shop, tearoom, tourist home, animal hospital, or other traffic generating use shall not be deemed to be a home occupation” would likely not alter the character of a district because the six other performance standards for a home occupation and a subsequent conditional use review would be required for home occupation exceeding sixteen vehicle trips per day. Also the rest of the definition for a home occupation would still be applicable. Per Section 7.09.020 a ‘Home occupation’ is defined as, “*Any use conducted entirely within the dwelling and carried on by the members of the family which use is clearly incidental and secondary to the dwelling for dwelling purposes and does not change the character thereof and in connection therewith are no commodities sold from the premises except that which is produced thereof, except as provided for in Section 5.06. [...].*” A home occupation would not be permitted if it would substantially change the character of the dwelling and therefore the character of the district and its peculiar suitability for a particular use would not be adversely impacted by the proposed amendment.

e. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

This proposed amendment would appear to not impact the value of buildings and the most appropriate use of land throughout the jurisdictional area because the six other performance standards for a home occupation would remain unchanged.

Removing the last sentence from the definition of ‘Home Occupation’ that reads, “The conducting if a hospital, barbershop, beauty shop, tearoom, tourist home, animal hospital, or other traffic generating use shall not be deemed to be a home occupation” would likely conserve the value of buildings and encourage the most appropriate use of land throughout the jurisdictional area because the six other performance standards for a home occupation would apply and a subsequent conditional use review would be required for home occupation exceeding sixteen vehicle trips per day. Also the rest of the definition for a home occupation would still be applicable. Section 7.09.020 defines a ‘Home occupation’ as, “*Any use conducted entirely within the dwelling and carried on by the members of the family which use is clearly incidental and secondary to the dwelling for dwelling purposes and does not change the character thereof and in connection therewith are no commodities sold from the premises except that which is produced thereof, except as provided for in Section 5.06. [...].*” A home occupation would not be permitted if it would substantially change the character of the dwelling and therefore the proposed amendment would likely conserve the value of buildings and encourage the most appropriate use of land.

Previously the provision of vehicle traffic of no more than eight all day could have been interpreted one of two ways:

1. That a trip was one vehicle entering and the same vehicle exiting the property or,

2. One vehicle entering the property or the same vehicle leaving the property.

Adding a definition for ‘Trip’ will remove any misperceptions on what constitutes a trip and make it clear that a trip is a single or one-direction vehicle movement originating or terminating (exiting or entering) at a given location not both. Because of this traffic will likely not increase unless a conditional use permit is sought to exceed sixteen vehicle trips in a day.

The proposed amendment to home occupations would likely conserve the value of buildings and encourage the most appropriate use of land throughout the jurisdictional area because home occupations would still be required to provide for off street parking and maximum daily trips would still be regulated, all while allowing home occupations as impact mitigated land uses.

Finding #8: Amending the Flathead County Zoning Regulations by removing the restriction on home occupations of no more than one vehicle trip at a given time, allowing for home occupations with between sixteen and thirty-two vehicle trips per day subject to issuance of a conditional use permit, adding a definition of ‘Trip’ and removing a sentence from the definition of ‘Home Occupation was found to conserve the value of buildings and encourage the most appropriate use of land throughout the area because the six other performance standards for a home occupation would remain unchanged, the definition of ‘Trip’ will eliminate any misunderstanding for trips allowed, a subsequent conditional use permit review would be required if the home occupation exceeds sixteen vehicle trips per day and home occupations would still be required to provide for off street parking.

4. **Whether the proposed text amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.**

All three of Flathead County’s incorporated cities’ zoning ordinances address home occupations. The discussion on compatibility with the zoning ordinances of each municipality has been separated in order to evaluate each city individually because each city has a different zoning ordinance.

- a. **City of Whitefish**

The City of Whitefish has WA – Agricultural zoning with a 15 acre minimum lot size, WCR – Country Residential zoning with a 2.5 acre minimum lot size, WSR – Suburban Residential zoning with a 1 acre minimum lot size and WER – Estate Residential zoning with a 20,000 square feet minimum lot size. These zoning classifications are similar to the AG-20, SAG-10, R-2.5, R-1 and R-2 county zones that would allow for increased trips with a conditional use permit if the amendment is approved. The City of Whitefish criteria for home occupations states, *“The home occupation shall not generate pedestrian or vehicle traffic in excess of that which is characteristic of the neighborhood in which it is located. Vehicle traffic may not be increased by more than one at a given time or by more than eight (8) during any one day.”* Allowing for additional trips may make the zoning regulations less compatible with the City

of Whitefish zoning by allowing additional traffic. However, adding a definition for ‘Trip’ will remove any misperceptions on what constitutes a trip and make it clear that a trip is a single or one-direction vehicle movement originating or terminating (exiting or entering) at a given location not both. Because of this traffic will likely not increase unless a conditional use permit is sought to exceed sixteen vehicle trips in a day. The conditional use permit review would determine if the maximum of thirty-two trips per day would be appropriate for a property in the vicinity of Whitefish.

Whitefish defines ‘Home Occupation’ as, *“Any occupation, profession, activity or use which is clearly a customary, incidental and secondary use of a residential dwelling unit and which does not alter the exterior of the property or affect the residential character of the neighborhood.”* The special provisions for a home occupation in the Whitefish zoning ordinance does not address the uses listed in the sentence proposed to be removed from the definition of ‘Home Occupation.’ Removing a sentence from the definition of ‘Home Occupation’ would not make the regulations incompatible with the City of Whitefish’s definition because the City’s definition of ‘Home Occupation’ does not contain the sentence to be removed.

This proposed amendment would appear to not impact compatibility with Whitefish’s zoning ordinance because six performance standards for a home occupation which serve to protect the public health, public safety and general welfare would remain unchanged and a home occupation would not be permitted if it is not clearly a customary, incidental and secondary use of a residential dwelling unit and does alter the exterior of the property or affect the residential character of the neighborhood.

Finding #9: The proposed text amendment would not make the Flathead County Zoning Regulations incompatible with the zoning ordinance of the City of Whitefish because a conditional use permit would be required to determine if the maximum of thirty-two trips per day would be appropriate for a property in the vicinity of Whitefish, the definition of ‘Trip’ will remove any misperceptions on what constitutes a trip, six performance standards for a home occupation which serve to protect the public health, public safety and general welfare would remain unchanged and a home occupation would not be permitted if it is not clearly a customary, incidental and secondary use of a residential dwelling unit and alters the exterior of the property or affect the residential character of the neighborhood.

b. City of Columbia Falls

The City of Columbia Falls has CSAG-20 – Agricultural zoning with a 20 acre minimum lot size, CSAG-10 – Suburban Agricultural zoning with a 10 acre minimum lot size, CSAG-5 – Suburban Agricultural zoning with a 5 acre minimum lot size, CR-1 – Suburban Residential zoning with a 1 acre minimum lot size, and CR-2 – One-Family Limited Residential zoning with a 20,000 square feet minimum lot size. These zoning classifications are similar to the AG-20, SAG-10, SAG-5, R-1 and R-2 county zones that would allow

for increased trips with a conditional use permit if the amendment is approved. The CSAG-20, CSAG-10, CR-1 and CR-2 zones allow for a home occupation with conditional use permit and in CSAG-5 a home occupation is a permitted use. The City of Columbia Falls requires a conditional use permit for all home occupations in CSAG-20 CSAG-10, CR-1 and CR-2 zones and in the county's equivalent zones a home occupation is currently a permitted use.

Adding a definition for 'Trip' will remove any misperceptions on what constitutes a trip and make it clear that a trip is a single or one-direction vehicle movement originating or terminating (exiting or entering) at a given location not both. Because of this traffic will likely not increase unless a conditional use permit is sought to exceed sixteen vehicle trips in a day. The conditional use permit review would determine if the maximum of thirty-two trips per day would be appropriate for a property in the vicinity of Columbia Falls.

Columbia Falls defines 'Home Occupation' as, *"Any use conducted entirely within the dwelling and carried on by the members of the family, but may include one employee outside the family which use is clearly incidental and secondary to the dwelling for dwelling purposes and does not change the character thereof and in connection therewith there are no commodities sold from the premises, except that which is produced thereof, provided that the same does not involve more than one-fourth of the total square footage of the dwelling. The conducting of a hospital, tea room, tourist home, animal hospital or any use generating traffic volumes greater than that generated by typical residential use shall not be deemed to be a home occupation."* The last sentence of Columbia Falls' definition is similar to the sentence proposed to be removed from the definition of 'Home Occupation' except that barber shop and beauty shop are not included in the sentence. However, based on performance standards and the other portion of the definition removing a sentence from the county's definition of 'Home Occupation' would not make the regulations any less compatible with the City of Columbia Falls' definition.

This proposed amendment would appear to not impact compatibility with the zoning ordinance of Columbia Falls because six performance standards for a home occupation which serve to protect the public health, public safety and general welfare would remain unchanged and a home occupation would not be permitted if it is not clearly incidental and secondary to the dwelling.

Finding #10: The proposed text amendment would not be incompatible with the zoning ordinance of the City of Columbia Falls because a conditional use permit would be required to determine if the maximum of thirty-two trips per day would be appropriate for a property in the vicinity of Columbia Falls, the definition of 'Trip' will remove any misperceptions on what constitutes a trip, six performance standards for a home occupation which serve to protect the public health, public safety and general welfare would remain unchanged and a home occupation would not be permitted if it is not clearly incidental and secondary to the dwelling.

c. City of Kalispell

The City of Kalispell does not have any agricultural or suburban agricultural zones and the lowest density residential zone has a minimum lot size of 20,000 square feet which is equal to the County's R-2 zone. Because the City of Kalispell only has one zone similar to the county zones that would be impacted by the proposed amendment to allow for additional trips, this amendment is unlikely to make the regulations incompatible with the City of Kalispell Zoning Ordinance.

Kalispell defines 'Home Occupation' as, "*A home occupation is any occupation, profession, activity or use which is clearly a customary, incidental and secondary use of a residential dwelling unit and which does not alter the exterior of the property or affect the residential character of the neighborhood.*" The supplemental regulations for a home occupation in the Kalispell zoning ordinance do not address the uses listed in the sentence proposed to be removed from the definition of 'Home Occupation.' This proposed amendment would appear to not impact compatibility with the zoning ordinance of Kalispell because six performance standards for a home occupation would remain unchanged and a home occupation would not be permitted if it is not clearly a customary, incidental and secondary use of a residential dwelling unit and does alter the exterior of the property or affect the residential character of the neighborhood.

Finding #11: The proposed text amendment is not likely to make the regulations incompatible with the zoning ordinance of the City of Kalispell because the City only has one zone similar to the county zones that would be impacted by the proposed amendment, Kalispell's definition of home occupation does not include the sentence that will be removed from the Flathead County Zoning Regulations definition, six performance standards for a home occupation which serve to protect the public health, public safety and general welfare would remain unchanged and a home occupation would not be permitted if it is not clearly a customary, incidental and secondary use of a residential dwelling unit and alters the exterior of the property or affect the residential character of the neighborhood.

V. SUMMARY OF FINDINGS

1. The proposed amendment appears to generally comply with the Flathead County Growth Policy, the Kalispell City-County Master Plan, Rogers Lake Neighborhood Plan and Development Code, West Valley Neighborhood Plan, Whitefish City-County Master Plan and South Woodland/Greenacres Neighborhood Plan because the performance standards for a home occupation would still apply which serve to preserve the character of a neighborhood, home occupations have a separate definition within most of the West Valley Neighborhood Plan area and bed and breakfasts, guest ranches and home offices would still be permitted within the Roger Lake Neighborhood Plan area.
2. The proposed amendment to the Flathead County Zoning Regulations was found to comply with and have no adverse impact on safety from fire and other dangers and

public health, public safety and general welfare because home occupations that exceed sixteen vehicle trips per day would be required to undergo a subsequent review process, the bulk and dimensional requirements within the zoning designations have been established to secure safety from fire and other dangers and all of the other performance standards for a home occupation would still be required to be met, some of which protect public health, public safety and welfare.

3. The proposed amendment was found to have no impact on water, sewerage, schools, parks and other public requirements because it would only allow for increased traffic in association with a home occupation.
4. Amending the Flathead County Zoning Regulations performance standards and definition for home occupations and adding a definition for trips was found to have minimal impact on transportation because a subsequent conditional use permit review would determine if adequate provision of transportation exists for the proposal and the conditional use permit could be conditioned to ensure adequate provision of transportation.
5. The proposed amendment was found to have no adverse impact on the reasonable provision of light and air because bulk and dimensional requirements for the underlying zoning would still be applicable and those requirements have been established to ensure a reasonable provision of light and air.
6. The proposed amendment to the Flathead County Zoning Regulations was found to have no negative effect on motorized and non-motorized transportation because future conditional use permit reviews would determine if home occupations have an effect on motorized and non-motorized transportation and the conditional use permit could be conditioned to ensure minimal impact on motorized and non-motorized transportation.
7. This proposed text amendment would be compatible with the Growth Policy of Columbia Falls and Kalispell because the Planning Board has determined that the proposed text amendment would not be out of character for a residential neighborhood and a subsequent conditional use permit review would be required for home occupations with sixteen to thirty-two vehicle trips per day which could ensure that such a proposal is not out of character with a neighborhood.
8. Amending the Flathead County Zoning Regulations by removing the restriction on home occupations of no more than one vehicle trip at a given time, allowing for home occupations with between sixteen and thirty-two vehicle trips per day subject to issuance of a conditional use permit, adding a definition of 'Trip' and removing a sentence from the definition of 'Home Occupation' was found to conserve the value of buildings and encourage the most appropriate use of land throughout the area because the six other performance standards for a home occupation would remain unchanged, the definition of 'Trip' will eliminate any misunderstanding for trips allowed, a subsequent conditional use permit review would be required if the home occupation exceeds sixteen vehicle trips per day and home occupations would still be required to provide for off street parking.

9. The proposed text amendment would not make the Flathead County Zoning Regulations incompatible with the zoning ordinance of the City of Whitefish because a conditional use permit would be required to determine if the maximum of thirty-two trips per day would be appropriate for a property in the vicinity of Whitefish, the definition of 'Trip' will remove any misperceptions on what constitutes a trip, six performance standards for a home occupation which serve to protect the public health, public safety and general welfare would remain unchanged and a home occupation would not be permitted if it is not clearly a customary, incidental and secondary use of a residential dwelling unit and alters the exterior of the property or affect the residential character of the neighborhood.
10. The proposed text amendment would generally not be incompatible with the zoning ordinance of the City of Columbia Falls because a conditional use permit would be required to determine if the maximum of thirty-two trips per day would be appropriate for a property in the vicinity of Columbia Falls, the definition of 'Trip' will remove any misperceptions on what constitutes a trip, six performance standards for a home occupation which serve to protect the public health, public safety and general welfare would remain unchanged and a home occupation would not be permitted if it is not clearly incidental and secondary to the dwelling.
11. The proposed text amendment is not likely to make the regulations incompatible with the zoning ordinance of the City of Kalispell because the City only has one zone similar to the county zones that would be impacted by the proposed amendment, Kalispell's definition of home occupation does not include the sentence that will be removed from the Flathead County Zoning Regulations definition, six performance standards for a home occupation which serve to protect the public health, public safety and general welfare would remain unchanged and a home occupation would not be permitted if it is not clearly a customary, incidental and secondary use of a residential dwelling unit and alters the exterior of the property or affect the residential character of the neighborhood.

VI. CONCLUSION

Per Section 2.08.020(4) of the Flathead County Zoning Regulations, a review and evaluation by the staff of the Planning Board comparing the proposed zoning text amendment to the criteria for evaluation of amendment requests found in Section 2.08.040 FCZR has found the proposal to generally comply with most the review criteria, based upon the draft Findings of Fact presented above. Section 2.08.040 does not require compliance with all criteria for evaluation, only that the Planning Board and County Commissioners should be guided by the criteria.

Planner: EKM