

City of MARKHAM

Task 11: Review & Assessment of Home Occupations

Comprehensive Zoning By-law Project



Markham Zoning By-law Consultant Team

Gladki Planning Associates, R. E. Millward and Associates,
Woodfield Consulting, Clarion Associates and Anthony Usher
Planning Consultant

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1. INTRODUCTION

This discussion paper on residential home occupations is one in a series intended to explore issues and best practices for Markham's comprehensive zoning by-law project. Home occupations are businesses generally operated by a primary resident of a dwelling unit. Businesses may include a professional office (accountant, lawyer, doctor), a service based business (hairstylist, dog grooming), an education service (music or dance instruction), artisanal space or simply a home business office. The role of the zoning by-law is to ensure that the operations of such a business do not negatively impact the character of the dwelling or create any adverse impacts on neighbouring properties, while at the same time supporting the overall economic objectives of the City.

The new Official Plan recognizes the growing trend for people to work from home. This is also reflected in the last census; where slightly over 13 percent of Markham's workforce reported working from home. Continuing improvements in technology make working from home a viable option. This report reviews the direction provided by the City's new Official Plan, reviews Markham's existing zoning by-laws, and compares regulations from other Ontario municipal zoning by-laws.

A list of reference documents that were consulted as part of this review is provided at the conclusion of this paper. This report will be included as part of the public consultation for the comprehensive zoning by-law currently scheduled for the Fall of 2015.

2. OFFICIAL PLAN

Section 5.1.1 of the Plan, General Policies on Employment, recognizes that home-based businesses are important for Markham's continued economic growth. This policy is intended to support a diverse spectrum of jobs and help create communities where people can live, work and play. The Official Plan definition for home occupations is provided below. Section 8 of the OP addresses home occupations in reference to land use designations.

Home occupation means an occupation or profession conducted for gain in a residential dwelling unit or a detached accessory building where the business or profession is conducted wholly within the dwelling unit or detached accessory building in a manner that is accessory to the principal residential use in accordance with the criteria of this Plan.

The regulatory guidance provided by the definition is that the occupation must be conducted *wholly within* a residential dwelling or accessory building and is accessory to the principal use. It is common practice within Ontario municipal zoning by-laws that business operations at home are contained within the dwelling unit. The Official Plan definition also states that a home occupation must comply with the criteria outlined in the Plan. The definition uses the words "conducted for gain". This appears redundant and could be removed to broaden the scope to allow not-for-profit occupations.

There are two additional definitions in the Official Plan that are similar to home occupations: "home business" and "home industry". These are definitions used in provincial legislation for the Oak Ridges Moraine and the Greenbelt lands. In Markham they apply only to lands shown as "Oak Ridges Moraine Natural Linkage Area", "Ridges Moraine Countryside" and "Greenbelt Protected Countryside" on Map 7 of the Official Plan.

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The definitions for these terms are reproduced below:

Home business means an occupation that involves providing personal or professional services or producing custom or artisanal products, is carried on as a small-scale accessory use within a single dwelling by one or more of its residents, and does not include uses such as an auto repair or paint shop or furniture stripping.

Home industry means a business that (a) is carried on as a small-scale use that is accessory to a single dwelling or agricultural operation, (b) provides a service such as carpentry, metalworking, welding, electrical work or blacksmithing, primarily to the farming community, (c) may be carried on in whole or in part in an accessory building, and (d) does not include uses such as an auto repair or paint shop or furniture stripping.

The definition for “home business” is very similar to home occupation, although it does not apply to accessory buildings. The definition of “home industry” is more extensive relating to agricultural related activity, which in the Markham Plan is essentially covered in Section 8 Official Plan policies for the Countryside designation. Unless the Province agrees that home occupations can be a substitute for home business and home industry in the Oak Ridges Moraine and Greenbelt lands covered by provincial legislation, Markham will have to include these definitions in its zoning by-law and apply them to the zoning categories for the lands in question as part of its implementation of a new comprehensive zoning by-law.

Section 8 of the Official Plan deals with land use designations and identifies where home occupations are allowed to operate. These include Residential, Mixed Use, Greenway and Countryside areas. In addition, home occupations are subject to the other policies outlined within the designation in which they are found.

Section 8.2.1.2 (iii) permits a dwelling unit including a *home occupation* in all ‘Residential’ designations.

Section 8.2.3, which deals with Residential Low Rise areas, states “In order to accommodate the trend for more and more people to work from home, *home occupations* may be included within residential buildings”.

Section 8.3.1.2 (d) under Mixed Use allows for a dwelling unit including a *home occupation*.

Section 8.6.1.2 (c) allows for a dwelling unit including *home occupation*, within Greenway designated areas, although these are not allowed in the Natural Heritage Areas.

Section 8.6.1.3 includes *home business* and *home industry* uses in parts of the Oak Ridges Moraine and Greenbelt areas.

Section 8.8.1.2 (a) allows a dwelling unit including a *home occupation* on lands designated Countryside.

The following area specific policy for Markham Village allows for a resident medical practitioner to operate an office of up to 50% of the GFA of the dwelling unit.

“9.13.4.6 On the ‘Residential Low Rise’ lands north of the CNR tracks which do not have hatching and 3 and 5 Beech Street as shown in Figure 9.13.4.4, a *home occupation* occupying up to 50 percent of the dwelling unit and the office

of one physician, dentist or drugless practitioner may also be permitted in the dwelling unit provided it is used by said physician, dentist or drugless practitioner as their private residence and that such office is to be used for consultation and emergency treatment only, and shall not be in the nature of a clinic, private hospital or nursing home.”

Draft

3. MARKHAM ZONING BY-LAWS

The City has passed two amending home occupation zoning by-laws, each of which amend a number of “parent” Markham zoning by-laws. Zoning By-law 238-86 prohibits the offices of physicians, dentists, drugless practitioners and other professionals in dwellings within residential zones. Eight years later, this by-law was further amended through Zoning By-law 53-94.

3.1 Zoning By-law 53-94

By-law 53-94 provides criteria for home occupations and specifically prohibits particular uses. By-law 53-94 further includes a number of definitions to be used within the context of this by-law, including: *driveway*; *floor area, gross*; *kennel*; *motor vehicle repair garage*; *retail store*; and *secondary use*. The definition for home occupation is:

Home occupation means a secondary use of a dwelling unit and its accessory buildings by at least one of the permanent residents of such a dwelling unit to conduct a gainful occupation or business activity.

The definition provided in the by-law is generally consistent with the new Official Plan requiring the activity to be conducted within the dwelling unit and/or accessory buildings. It further adds that the occupation must be operated by at least one of the permanent residents.

The criteria under which a home occupation may be established are as follows:

- The use is clearly secondary to the residence;
- No more than 25% of the total GFA (include accessory buildings) may be used for the occupation;

- There is no evidence of noise, vibrations, fumes, dust, glare or radiation;
- Only one employee is permitted in addition to the member of the household provided there is an off-street parking space solely available for said employee;
- No outdoor storage or display is permitted;
- On-site retail is limited to items produced on site (mail order sales are excluded from this provision);
- Any occupation involving instructional activity is limited to four students at a time;
- Delivery vehicles are restricted to those typically found in residential neighbourhoods;
- Parking and vehicle storage is restricted only to the driveway;
- Accessory buildings may be used for the occupation provided they meet setback requirements for the main building; and
- No signs advertising the business are permitted.

These regulations are consistent with practices from other Ontario municipal zoning by-laws. However, By-law 53-94 is noticeably different from other municipal by-laws by including a long list of prohibited uses as follows:

<ul style="list-style-type: none"> • Motor vehicle repair garage • Scrap yards • Dating bureau/escort service • Public bath/whirlpool • Vehicle towing • Contractor’s yards • Taxi service • Kennels • Animal hospital • Adult entertainment parlour • Retail store • Restaurant • Fast food restaurant • Take out restaurant • Sales or service of motorized vehicles, machinery or equipment 	<ul style="list-style-type: none"> • Sales or installation of automotive and audio products • Any use which, from its nature or operation, creates a nuisance or is liable to become a nuisance or offensive by the creation of noise or vibration, or by reason of the emission of gas, fumes, dust or objectionable odour, or by reason of the matter, waste or other material, and without limiting the generality of the foregoing shall include any uses which under the appropriate regulations may be declared to be a noxious or offensive trade, business or manufacture. • Any other use or uses prohibited pursuant to the prohibited uses section of the applicable zoning by-law(s)
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By-law 53-94 reverses the prohibition included in By-law 238-86 on physician offices, dentist and drugless practitioners but includes the following conditions:

- The residential lot’s front or flankage yard is located on a Provincial Highway, major arterial road, minor arterial road or major collector road as designated in the Official Plan.
- The home must be used by the practitioner as their private residence.

It should be noted that new Official Plan identifies arterial roads differently than the previous Plan; to ensure consistency with the new Official Plan this aspect will need to be considered in reviewing provisions in the existing by-laws for home occupations. In general, it is not advisable for zoning by-laws to specifically reference the Official Plan.

3.2 Zoning By-law 177-96

Zoning By-law 177-96, as amended, covers the majority of subdivisions developed in the late 1990's within Markham.

Home occupation according to the by-law “means an occupation for gain in a dwelling unit or a detached accessory building”. This definition is generally consistent with the Official Plan, but like the definition in By-law 53-94 uses different words to achieve a similar meaning.

By-law 177-96 permits home occupations in all Residential zones, two of which also allow multiple dwellings and apartment dwellings and three Community Amenity zones which allow apartment dwellings and multiple dwellings. Home occupations are not permitted in Neighbourhood Commercial (NC) zones. This is primarily a commercial zoning category that also allows for residential uses in *Multiple Dwellings* in NC1 and NC2 and NC3 zones, apartment dwellings in NC 2 and NC 3 zones as well as *Duplex, Triplex and Fourplex Dwellings* in the NC3 zone. In reviewing its permissions for home occupations for the new zoning by-law the City could consider whether it is necessary to expand the permission to areas currently zoned NC as well.

Section 5.10 of the By-law identifies the following requirements.

Where permitted, the home occupation shall:

- Be clearly a secondary use;
- Be conducted entirely inside either the main and/or accessory building;
- Be conducted by someone living on the same property;
- Not occupy more than 25 percent of the total GFA if the home occupation is contained in the main building;
- Not occupy more than 50 percent of the total GFA of a detached accessory building, which is defined as a building “customarily incidental, subordinate and exclusively devoted to the main use or main building on the same lot”, if the home occupation is contained within the accessory building;
- Not create noise, vibration, fumes, odour, dust, glare or radiation which is evident from outside;
- Not employ more than one non-resident employee;
- Not have any outside storage or display;
- Not sell items not made on the premises (telephone and mail orders are permitted);
- Limit the number of students to four where instructional activities are taking place; and
- Not permit a commercial vehicle for delivery or pick up not commonly found in residential areas.

The by-law also includes a list of prohibited uses as follows;

- any use involving the storage, repair, maintenance and/or towing of motor vehicles or other machinery or equipment;
- medical offices, except as set out in Section 6.8.3;
- any use involving the treatment, care and/or grooming of any animal, including a kennel or a day-kennel;
- any use involving the sale of prepared food for human consumption;
- dating bureaus/escort services;
- contractors' yards;
- taxi service depot/dispatch; and,
- retail stores.

3.3 Zoning By-law 2004-196

By-law 2004-196 applies to the Markham Centre area. The definition for home occupation in this bylaw is similar to the definition in By-law 177-96 except that it does not apply to accessory buildings since only apartment, townhouse and stacked townhome dwellings are permitted in the Markham Centre zones. The definition states that a home occupation “means an accessory use of a dwelling unit for an occupation of business which results in a product or service that is clearly secondary to the main use of the buildings as a dwelling unit”.

The conditions regarding the operation of a home occupation are contained in section 5.5.1 of by-law 2004-196 and are exactly the same as the conditions in section 5.10 of Bylaw 177-96, which are described above. In addition, By-law 2004-196 prohibits motor vehicle related uses, medical offices, animal treatment, care or grooming and the sale of prepared food as home occupations. This list is much shorter than the list in the other two Markham by-laws, but seems to address the key categories of uses that may pose problems.

Home occupations are permitted in MC-D3, MC-D4 and MC-D5 zones under By-law 2004-196, all of which allow apartment dwelling units, multiple dwellings and townhouse dwellings. Home occupations are not listed as a use in zone MC-D2, which is a mixed use zone that allows a range of commercial activities in addition to multi-unit residential uses, or in zone MC-D5 which only allows townhouse dwellings as residential uses.

The regulations found in Zoning By-laws 53-94, 177-96 and 2004-96 are generally consistent with the approach taken by other Ontario municipalities.

4. COMPARISON OF MARKHAM BY-LAWS AND PRACTICES FROM OTHER MUNICIPALITIES

Permissions and regulations regarding home occupations were reviewed from ten Ontario municipalities. The general findings include:

- The common approach for regulating home occupations is to include criteria designed to prevent noxious or disruptive impacts on surrounding neighbourhoods including identifying a list of permitted and non-permitted activities.
- Where specific activities are either permitted or prohibited, the list is short. For example, Oakville lists 5 permitted uses and St. Catharines lists 3 uses that are not permitted.
- Some of the criteria span a considerable range from municipality to municipality. An example is the allowed square footage for a home occupation where the range is between 28 to 100 sq. m.

Given that Markham's existing home occupation provisions in By-laws 53-94, 177-96 and 2004-196 are comparable to the practices of other municipalities, the following is presented to show nuances in how the various municipalities have applied similar criteria. This may assist Markham in refining its existing regulations to meet the City's growth and other planning objectives, or it may satisfy Markham that its current practice in By-laws 177-96 and 2004-196 is appropriate.

4.1 Definitions

Comparing the various by-laws shows that in some cases definitions may be used to include regulatory guidance that could otherwise be a part of the general provisions of the by-laws. The most extensive example of this is Vaughan which includes the following definition:

“Home Occupation – Means an occupation conducted in a dwelling unit and which:

- i) is clearly secondary to the use of the dwelling unit as a private principal residence;
- ii) does not change the external character of the dwelling unit as a private residence;
- iii) does not create or become a public nuisance, in particular to noise, traffic or parking.”

Definitions in Markham Zoning By-laws 53-94, 177-96 and 2004-96 are more clearly focused on defining what a home occupation is. This is also true in the new Official Plan, which is generally consistent with the existing zoning definitions.

4.2 Permitted Zones and Restrictions by Dwelling Types

Markham by-laws 53-94, 177-96 and 2004-196 permit home occupations in all dwelling units. The review of zoning by-laws in other municipalities reveals that home occupations are sometimes restricted to particular dwelling types. Mississauga, Brampton, London and Vaughan typically restrict home occupations to residences that are either single-detached or at least have street level access.

In St. Catharines, Oshawa, and Ottawa home occupations are generally permitted throughout residential zones. Toronto and Oakville are similar, but music and dance instruction may only be conducted in a detached house. Burlington includes a similar restriction, but the list of restricted uses is longer and includes: fitness activities, medical and health care office, aesthetician, hairstylist, complementary health care, pet grooming and pet training.

In designing its new by-law Markham may want to consider restricting certain home occupations, such as music and dance instruction, to dwelling units which would not generate noise incompatibility with adjacent units. A related issue is to what extent home occupations should be accommodated in multiple unit buildings. An increasing proportion of Markham’s housing stock has shifted to this form of housing over the past few years and all indications are that this trend will continue in the future. Many people in these types of dwellings work from home and have set up home offices. Markham’s existing by-laws recognize the need to accommodate home occupations in multi-unit buildings and provide a good basis for addressing this issue in the new zoning by-law, unless there are complaints that have been generated about these activities over the past few years.

4.3 Restrictions and/or Permission for Selected Uses

Markham by-law 53-94 includes a long list of prohibited uses (reproduced on page 3 above). By-law 177-96 includes a shorter, but still quite extensive list of prohibited use. By-law 2004-196 includes a short list of prohibited uses.

Of the municipal zoning by-laws reviewed, the following have specifically identified permitted and prohibited uses.

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<p>Oakville</p> <p><i>Permitted</i></p> <ul style="list-style-type: none"> • Art gallery • Business office • Commercial school • Medical office • Service commercial establishment 	<p>London</p> <p><i>Not Permitted</i></p> <ul style="list-style-type: none"> • Swimming pool as part of the home occupation • No food preparation or service • All pet services except grooming (see below) <p><i>Permitted</i></p> <ul style="list-style-type: none"> • Pet grooming (not permitted outside) 	<p>Toronto</p> <p><i>Not Permitted</i></p> <ul style="list-style-type: none"> • Manufacturing use • Auto-related uses • Animal shelter or kennel • Client visits including consultations, receiving services or goods <p><i>Permitted</i></p> <ul style="list-style-type: none"> • Barber, hairdresser, beautician • Dressmaker, seamstress, tailor • Health related professional
<p>Mississauga</p> <p><i>Permitted</i></p> <ul style="list-style-type: none"> • Tutoring • Music instruction • Artist or artisan • Office (including medical) 	<p>Brampton</p> <p><i>Not Permitted</i></p> <ul style="list-style-type: none"> • Body rub parlour • Repair or servicing of motor vehicles or internal combustion engines 	<p>St. Catharines</p> <p><i>Not Permitted</i></p> <ul style="list-style-type: none"> • Auto-related uses • Small engine repair • Kennel <p><i>Permitted</i></p> <ul style="list-style-type: none"> • One hair dressing chair • Bed and breakfast (up to 4 rooms) • Home daycare (up to 5 people) • Kennel-agricultural area

Markham may wish to also include a short list of home occupations that are permitted and/or not permitted using its experience with its by-laws as a guide. A general trend in other municipal by-laws is to not permit manufacturing, food preparation or any auto related use. Markham also excludes medical offices in by-laws 177-96 and 2004-196.

Markham could also decide to explicitly include a private home daycare with up to 5 children as a permitted home occupation or alternatively to list this as a separate use as is done in By-laws 177-96 and 2004-196. The advantage of listing it as a separate use is that it can then be targeted to zones where it is considered appropriate, which may be different from where a home occupation is considered appropriate.

Another option regarding prohibited uses is to only use the words in By-laws 53-94, 177-96 and 2004-196 regarding not generating noise, fumes odour etc. to provide a more general guide for the types of uses that are not to be included as home occupations. This approach would have the advantage of providing a good general indication of what is not intended as a home occupation and avoid the problem of trying to create an exhaustive list. Any further modifications for particular zones can be handled as exceptions (i.e. restricting medical offices as home occupations in apartment dwellings, if this is considered appropriate). Such an approach, together with other restrictions regarding floor space and limits on non-resident employees as described in the following sections, could effectively limit the range of home occupations to what is intended. On the other hand, this approach would not deliver the level of specificity that a list of not permitted uses would provide. The approach in By-law 2004-196 would seem to provide a good balance of grouping potentially problematic uses into four categories of uses that are not considered as part of a home occupation.

4.4 Maximum Gross Floor Area and Permitted Square Footage

Twenty-five percent of the total GFA is generally the amount of a space within a dwelling that can be used for the home occupation. There is greater variation in the maximum square footage that can be used towards the activity, although not all by-laws specify a limit. The lowest limit noted was 28 square metres in London, Ottawa and Oshawa reaching as high as 100 square metres in Toronto. Ottawa also includes a provision that states any number of businesses may operate provided the maximum floor area is not exceeded.

Burlington's by-law allows the use of the basement or cellar and 25 percent of the additional GFA up to 100 square metres, whereas, Oakville includes the basement into the calculation of the allowed 25 percent GFA. Some municipalities indicate that the occupation must clearly be a secondary use, either in the regulations or in their definitions.

By-laws 53-94, 177-96 and 2004-196 state that a home occupation is to be clearly a secondary use and not occupy more than 25 percent of the GFA. By-laws 177-96 and 2004-196 also restrict the GFA of an accessory building used for a home occupation to 50 percent.

This regulation may prove difficult to measure when determining how much of a dwelling is being used exclusively as a home occupation, however in most instances where it matters, such as a medical practitioner's space or space for a hair service salon, the demarcation of working space and living space will likely be quite clear.

4.5 Parking

The need and provision of additional parking related to home occupations can be affected by the nature and size of the home occupation, the number of vehicles owned by a household, as well as the type of dwelling unit and existing parking configuration. Of the by-laws reviewed, each one could be categorized as either including an on site parking a requirement for home occupations, explicitly stating that no additional parking is required or not mentioning parking provision.

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Parking Requirement

- Mississauga requires one additional parking space.
- Brampton requires a minimum of six parking spaces for each practitioner when a medical or dental office is located in a private residence.
- Milton provides a range of required parking spaces based upon square footage: 0 – 10 square metres = No parking additional parking; 10 – 20 square metres = 1 additional parking space; 20 – 30 sq m = 2 additional parking spaces.

No Mention of a Parking Requirement

- Toronto
- St. Catharines
- Oshawa

No Additional Parking Required

- London does not require the creation of additional on-site parking.
- Vaughan includes in the definition for home occupation that parking may not become a nuisance.
- Oakville does not require minimum parking.
- Ottawa allows for parking to be provided in the driveway. The storage of vehicles is strictly prohibited.
- Burlington allows off-street parking in accordance with parking requirements of the by-law.

Markham By-law 53-94 requires that an additional off-street parking space be provided if there is a non-resident employee. By-laws 177-96 and 2004-196 are silent on this issue. Clearly parking is not an issue if there are only residents working at home.

If there is a non-resident employee there may be an impulse to impose an additional parking requirement. However in assessing whether to impose such a requirement it will be important to consider if providing an additional space is truly necessary (i.e. is there already space on the driveway and what is the likelihood of the employee arriving by car) and to what extent will it detract from the appearance of the streetscape in the neighbourhood by creating additional paved surfaces. Another consideration is that it may also be difficult or impossible to provide additional parking on lots which have limited space available for this purpose. Thus, imposing a parking requirement in these instances could undermine the broader economic objectives associated with recognizing home occupations. Ultimately parking requirements may best be adjusted based on neighbourhood context, availability of on-site parking and the City's general policy with regards to the reduction of car use.

4.6 Operators Residing in Dwelling

About half of the by-laws reviewed note in their regulations that the home occupation must be operated by a resident of the dwelling. This is sometimes provided for in the definition, as is the case with London. Some by-laws also note that one or more of the residents may be involved in the operations. This regulation can act as a safe guard, preventing people renting out space in their

homes for non-residents to work from. However, this may also be controlled by limiting the number of and role of non-resident employees.

Markham By-laws 177-96 and 2004-196 state that a home occupation can only be conducted by someone living on the same property.

4.7 Maximum Number of Non-Resident Employees

The by-laws reviewed are split on allowing either a single external employee or none at all. St. Catharines, Ottawa, Brampton and London each allow for one non-resident employee to work from the dwelling. In London, the role of the employee is restricted to a supportive role such as secretarial, accounting or clerical. Similarly, Toronto allows for one employee when supporting a medical office.

By-laws 53-94, 177- 96 and 2004-196 limit the number of employees to one non-resident. A useful consideration for Markham is that restricting the number of non-resident employees reinforces the intent of home occupations as primarily places where residents can work from home and allows City inspectors to respond to complaints if neighbours believe this intent is violated.

4.8 Maximum Number of Clients Allowed on Property

Restricting the number of clients or customers of a home occupation is approached in a number of ways. In some by-laws, a specific number of people is provided. Mississauga allows two clients, Burlington and Oshawa each allow three, and London five. Toronto does not allow any customers in the dwelling except for educational purposes. Similarly, Oshawa includes a provision that allows up to five daycare spots.

Ottawa restricts customers in particular dwelling types, including secondary and rooming units as well as apartment buildings. Customers are allowed in single-family homes.

Markham by-laws do not limit the number of customers of clients, since by implication, the other restrictions would in effect limit activities associated with visitors to the dwelling. By-laws 53-94, 177-96 and 2004-196 do restrict the number of students involved in instructional activity to four.

It should be noted that restricting the number of clients may be difficult to regulate, since clients typically come and go and are not present on a permanent basis. On the other hand a regulation on the number of clients, if adopted, could provide neighbouring residents opportunities to file complaints with the City where problems exist and allow City inspectors to follow up to determine compliance with the by-law. On balance it may be more effective to address the traffic generated by some home occupations by imposing other restrictions as is done in Markham's existing by-laws.

4.9 Restrictions Imposed for On-site (Retail) Sales

Where addressed in the by-laws, retail sales are generally limited to the items directly associated with or ancillary to the home occupation. Oshawa and Ottawa each include a requirement that the item must be produced on the premises. By-laws 53-94 177-96 and 2004-96 restrict retail sales to items produced on site with telephone or mail order sales also permitted. To avoid confusion sales using electronic media may also be added to this list.

4.10 Number of Home Occupations Permitted

Restricting the number of home occupations is not always controlled in municipal by-laws but where it is, it is usually restricted to one. This is the case with Brampton, Mississauga and Vaughan. Ottawa appears unique compared to the others in that it explicitly allows for any number of home occupations provided that the maximum GFA is not exceeded. Markham by-laws do not restrict the number of home occupations carried out on site in its by-laws.

4.11 Educational Uses

Educational uses are sometimes mentioned under the regulations for home occupations. Toronto does not allow for clients to be in the home, but does allow clients for educational activities. Music and dance instruction may only occur in a detached house. Burlington allows for music, dance and singing activities in detached dwellings only. Oakville also allows for a commercial school, and similarly restricts music instruction to detached houses. Mississauga lists tutoring and music instruction as permitted uses. As mentioned previously Markham By-laws 53-94, 177-96 and 2004-196 limit instructional activity to four students.

4.12 Advertising

Advertising and signage is addressed in six of the by-laws reviewed. Those six are evenly divided between allowing and not allowing signs. Two of the by-laws that allow for signage, Ottawa and Milton, each state that any sign must be done in accordance with their respective sign by-laws. Brampton allows for one sign provided that is attached the building is no larger than 0.15 square metres Oakville, Mississauga and Burlington prohibit signs. These issues may be best dealt with through the City's sign by-law. Markham's current by-law 53-94 does not permit signs advertising a home occupation.

4.13 Permitted in Ancillary Building or Garage

Five of the ten by-laws reviewed reference the use of an ancillary building and/or garage for home occupation. Toronto does not allow the use of ancillary building or structure. Burlington allows both attached and detached garages and accessory buildings to be used for the storage of goods and materials related to the occupation. Brampton allows for uses in both accessory buildings and garages. Ottawa is the most prescriptive, where it provides a limit of 54 sq m of garage space that may be used but specifies that parking standards must be met. Markham Bylaws 53-94, 177-96 and 2004-196, as well as the Official Plan, allow home occupations to be carried out in accessory buildings.

4.14 Outside Use

The review of the other municipal by-laws reveals that an outside use is largely not allowed. St. Catharines is the sole exception to this by including the use of the outdoor space in its definition for home based occupations.

In 2013, by-law 53-94 was the subject of an approved minor variance application to permit a backyard swimming pool to be use for a home occupation. There was a follow up assessment of this matter by staff in a report to Council recommending that the zoning by-law not be amended to permit the activity across the City, but that such requests continue to be dealt with at the Committee of Adjustment. Markham's new Official Plan requires activities related to the home occupations be contained within a dwelling or accessory building. The implication of the Official Plan definition is that any outside use for a home occupation would not be in compliance with the policies of the Official Plan.

4.15 Restrictions on Size of Delivery Vehicles

Large commercial vehicles making regular deliveries in residential areas are generally incompatible with the planning intent for these areas. In London's by-law, no commercial vehicles are permitted in connection with a home occupation and no delivery of materials to the dwelling unit is permitted from a vehicle which has a registered gross weight exceeding 5,000 kilograms (11,023 pounds).

Markham may want to consider including a similar restriction to protect the integrity of its residential areas. However, such a provision may be difficult to police and undesirable to impose on moving vans. It may also be unnecessary if other provisions for home occupations are included such as restricting size, permitted uses, and number of employees. Currently Markham By-laws 53-94, 177-96 and 2004-96 restrict delivery vehicles to those typically found in residential neighbourhoods.

4.16 Licensing

The question of whether to require home occupations to apply for licenses has come up during the course of this review. The issue is whether licensing could do a better job of controlling possible externalities like noise and fumes than zoning regulations which would frame potential complaints and follow up inspections by City staff. The vast majority of municipalities have not instituted a licensing regime for home occupations.

For most municipalities recognizing home occupations in their zoning by-laws dovetails nicely with their economic development objectives for supporting businesses and recognizes the reality that more and more people are working from home. This is also true for Markham. Imposing a licensing regime on home occupations, most of which only involve a resident working in front of a computer, could undermine these economic development objectives.

A very small percentage of home occupations may once in a while generate an impact and perhaps a complaint. The intent of zoning regulations, such as the ones described above, is to address these very limited eventualities. Licensing would inconvenience many residents, require additional municipal resources, with little, perhaps no, additional benefit.

5. CONCLUSION AND SUMMARY

The new Official Plan recognizes the role of home-based businesses in supporting Markham's continued economic growth and developing community vitality. The Official Plan definition and land use designations provide for home occupations within dwelling units and their accessory buildings throughout all residential and most mixed use zones.

This paper reviews Markham by-laws 53-94, 177-96 and 2004-196. Zoning By-law 53-94 initially permitted a small list of home occupations with a large number of restrictions and specified a significant list of non-permitted uses. By-laws 177-96 and 2004-196 liberalized and updated the standards governing home occupations to accommodate the growing trend for more and more people working from home.

A review from ten other municipal by-laws found that Markham's approach in By-laws 177-96 and 2004-196 is generally consistent with how other Ontario towns and cities are regulating home occupations. The conclusion of this paper is that By-laws 177-96 and 2004-196 represent a progressive and reasonable approach to regulating home occupations which furthers the economic and other objectives of the Official Plan. The provisions included in these by-laws provides a good basis for moving forward in the new comprehensive zoning by-law.

The following provisions are common to by-laws 177-96 , 53-94 and 2004-196 and are common to other Ontario municipal zoning by-laws. It would therefore make sense to carry these forward to the new comprehensive by-law:

Where a home occupation is permitted, the home occupation:

- shall clearly be a secondary use of the lot;
- shall be conducted entirely within a dwelling unit and/or accessory building on the lot;

- shall be conducted by at least one of the residents of a dwelling unit located on the same lot;
- shall not occupy more than 25 percent of the gross floor area of the dwelling unit and any associated accessory buildings on the same lot;
- shall not create noise, vibration, fumes, odour, dust, glare or radiation which is evident outside the dwelling unit;
- shall not employ more than one employee, in addition to members of the household;
- shall not involve the outdoor storage or outdoor display of materials or finished products;
- shall not consist of an occupation that involves the sale of a commodity not produced on the premises, except that telephone or mail order sales of goods shall be permitted;
- if involving instructional activity, shall not be occupied by more than four students at any one time for such an activity; and
- shall not require receipt or delivery of merchandise, goods or equipment by other than a passenger motor vehicle or by parcel or letter carrier mail service using motor vehicles typically employed in residential deliveries.

Additional considerations that Markham may wish to address include:

- List of not permitted uses grouped as manufacturing, animal grooming and care, food production and auto related, and perhaps medical offices in multi-unit buildings.
- Whether to include a private home day care as a home occupation or as a separate use.
- Restrictions/prohibitions on signs and advertising.
- Review provision of parking, taking into consideration that parking may not be necessary since parking spaces can be shared with residents. The requirement for additional parking may also negatively impact the streetscape, undermine Markham's economic development objectives and run counter to Markham's policy of reducing car use.

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APPENDIX:
By-law 177-96 - Section 6.8

Draft

Task 11: Home Occupations

6.8 HOME OCCUPATIONS

6.8.1 Conditions

Where a home occupation is permitted in a Zone, the home occupation:

- a) shall clearly be a secondary use of the lot;
- b) shall be conducted entirely within a dwelling unit in the main building on the lot;
- c) shall be conducted by at least one of the residents of a dwelling unit located on the same lot;
- d) shall not occupy more than 25 percent of the gross floor area of the dwelling unit and any associated accessory buildings on the same lot;
- e) may be carried out in an accessory building if the accessory building complies with the required setbacks for the accessory building on the lot;
- f) shall not create noise, vibration, fumes, odour, dust, glare or radiation which is evident outside the dwelling unit;
- g) shall not employ more than one employee, in addition to members of the household;
- h) shall not involve the outdoor storage or outdoor display of materials or finished products;
- i) shall not consist of an occupation that involves the sale of a commodity not produced on the premises, except that telephone or mail order sales of goods is permitted;
- j) if involving instructional activity, shall not be occupied by more than four students at any one time for such an activity; and,
- k) shall not require receipt or delivery of merchandise, goods or equipment by other than a passenger motor vehicle or by parcel or letter carrier mail service using motor vehicles typically employed in residential deliveries.

6.8.2 Prohibited Home Occupations

Notwithstanding the above, the following uses are not home occupations for the purposes of this By-law:

- a) any use involving the storage, repair, maintenance and/or towing of motor vehicles or other machinery or equipment;
- b) medical offices, except as set out in Section 6.8.3;
- c) any use involving the treatment, care and/or grooming of any animal, including a kennel or a day-kennel;
- d) any use involving the sale of prepared food for human consumption;
- e) dating bureaus/escort services;
- f) contractors' yards;
- g) taxi service depot/dispatch; and,
- h) retail stores.

**APPENDIX:
Comparison Table of Regulations
Found in Other Ontario Zoning
By-laws**

Draft

Task 11: Home Occupations

	Conducted wholly inside	Maximum GFA	Additional Parking Requirement	Must be a operated by a resident of the dwelling	Maximum # of Non-resident employees	Be clearly a secondary use
St. Catherines	✓	25% (max 40 sq m)			1	
Ottawa		25% (28 sq m)		✓	1	
Toronto		25% (max 100 sq m)			0	
Mississauga	✓	25% (max 50 sq m)		✓	0	
Brampton		15%		✓	1	✓
Milton		25% (max 30 sq m)	0-2 depending on GFA of occupation	✓		✓
London		25% (max 28 sq m)			1	25% (max 28 sq m)
Vaughan		25%	2		2	
Burlington		25% (max 100 sq m)	1		0	
Oakville	✓	25% (max 50 sq m)	No Min	✓	0	
Oshawa		25% (max 28 sq m)	0	✓	0	25% (max 28 sq m)

	No Outside storage or display	Restriction on on-site retail. Yes (Related to Business) No	Restrictions on noxious omissions	Allow Clients to dwelling unit	Permit Educational Use
St. Catherines	✓	Yes	✓	n/a	
Ottawa	✓	Yes	✓	Restricted by dwelling-type	
Toronto	✓	No		No, apart from educational uses	✓
Mississauga	✓	n/a		2	
Brampton	✓	Yes		n/a	
Milton	✓	No	No	n/a	
London	✓	No		5	
Vaughan		n/a		n/a	
Burlington	✓	Yes	Yes	3	✓ Up to 3 students
Oakville	✓	No		n/a	
Oshawa		Yes	✓	3 (daycare restricted to 5)	

Task 11: Home Occupations

	Allow for music and dance instruction in a detached house only	No outside or building alteration (including advertising)	Permitted in an Ancillary Building or Garage	Restriction on size of delivery vehicle
St. Catherines		✓	No	
Ottawa				
Toronto	✓	✓	No	
Mississauga		✓		
Brampton		✓		
Milton			No	
London				✓
Vaughan				
Burlington	✓	✓		
Oakville	✓	✓		
Oshawa		✓		