



## Staff Report

**Date:** August 28, 2018

**To:** City Council

**From:** Valerie J. Barone, City Manager

**Reviewed by:** Andrea Ouse, Director of Community and Economic Development

**Prepared by:** Frank Abejo, Principal Planner  
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(925) 671-3128

**Subject:** **Considering Home-based Business Standards on clients and customers**

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### Report in Brief

Home-based businesses that provide instruction or tutoring to students are currently limited to individual instruction (i.e., not more than one student at a time) and not more than six total students per day. On June 11, 2018, the Policy Development and Internal Operations Committee (PDIO) considered amending the Development Code to increase the number of students that receive instruction or tutoring by a home-based business. The Committee considered a code amendment that would increase the number of students served by a home-based business. Their consideration resulted in a split vote, Mayor Birsan in favor and Vice Mayor Obringer opposed. Although the proposed code amendment was not formally recommended by the PDIO, the PDIO Committee agreed to forward the amendment for consideration by the full Council.

On August 1, 2018, the Planning Commission considered the matter and recommended maintaining the current limits on students served by home-based businesses (by minute order vote 3-0).

### Recommended Action

Maintain existing regulations allowing “by right” (non-discretionary) home-based tutoring or instruction for one student at a time, and not more than six total students per day, during approved hours of operation.

## **Background**

The Development Code defines “Home-based business” as “an income-producing activity customarily conducted within a residence or residential accessory building, only by the inhabitants thereof, which use is incidental to and does not change the character of the residential use of the property.” A home-based business is permitted as an accessory use to the residential use of a property but must comply with standards contained in Development Code Section 18.200.100. The standards include the following restrictions on clients, customers or students:

No clients or customers shall be permitted at the site of the home-based business, except for students engaged in individual home instruction; i.e., with one student at a time and no more than six students per day. Student hours shall be between 8:00 a.m. and 8:00 p.m. An exception for nonstudent clients is allowed pursuant to subsection (D)(2) of this section.

In January 2017, Code Enforcement received a complaint regarding an unpermitted home-based tutoring business at 3733 Crenna Avenue. The home-based business operator was informed by Code Enforcement of the requirement to obtain a business license and Home-based Business Permit. The Home-based Business Permit lists the applicable standards and restrictions for home-based businesses, such as the maximum floor area devoted to the business, parking, and restriction of the number of employees. By completing the application, the home-based business operator acknowledged that the business would operate in compliance with each standard, including the restriction for individual tutoring. The Code Enforcement Case was closed after the home-based business owner obtained both the business and Home-based Business Permit in February 2017.

In April 2017, a second complaint was filed with Code Enforcement regarding the home-based business serving multiple students and causing traffic impacts in the neighborhood. Code Enforcement worked with the home-based operator to designate parking areas for students outside of the immediate area and the case was closed.

In February 2018, Code Enforcement received a third complaint that reported the home-based business was operating as a school. Code Enforcement inspected the business and spoke with the business owner who confirmed tutoring was provided for up to four students at a time.

On June 11, 2018, the City Council Committee on Policy Development & Internal Operations (PDIO) evaluated current home-based business regulations in regards to tutoring multiple students. Staff recommended that the PDIO Committee maintain the current regulations that allow “by right” (non-discretionary) home-based tutoring or instruction for one student at a time, and not more than six total students per day, during approved hours of operation.

As an alternative, staff provided the PDIO Committee options for amending the Development Code that would: (1) allow tutoring or instruction in any combination of up to four students at a time, and not more than six total students per day, and/or (2) allow tutoring or instruction in any combination of up to four students at a time, and not more than 12 students total per day, with an Administrative Permit that would include notification to residents within a 300-foot radius, and the right to appeal the decision to the Zoning Administrator. The home-based tutoring operator also proposed Development Code amendments for the PDIO Committee's consideration that would eliminate limits on the number of students tutored, eliminate restrictions on hours of operation, or extend the hours from 8:00 p.m. to 9:00 p.m.

The PDIO Committee was split on amending the Development Code. Vice Mayor Obringer recommended maintaining the current regulations on home-based instruction and tutoring. Among the concerns Vice Mayor Obringer expressed with amending the Development Code was the impact such businesses would have on condominiums, apartments, and similar higher density neighborhoods, where impacts will be greater due to the closer proximity of homes and parking solutions will be more limited compared to single-family neighborhoods. Mayor Birsan expressed support for amending the Development Code to allow education-related tutoring for multiple students and believed that issues arising from home-based tutoring businesses can be addressed through the City's code enforcement process. Mayor Birsan recommended forwarding both options presented by staff and increasing the total number of students served to 16 and extending operating hours to 9:00 p.m. with an administrative permit. A redline draft of code amendments consistent with Mayor Birsan's recommendations is provided as Attachment 1. Although the proposed code amendment was not formally recommended by the PDIO, the PDIO Committee agreed to forward the amendment for consideration by the full Council.

The Planning Commission considered this matter on August 1<sup>st</sup>. The home-based tutor who is seeking the code amendment stated that her tutoring enrollment is at approximately 40 students, and that she typically tutors three groups of four students in the weekday evening hours and on weekends. She also stated that given the competing demands on her students' schedules, she wished to have the code amended to increase her operating hours to 9 p.m., and desired to increase the amount of allowed students to 16 students per day. Three clients of the businesses stated that it would reduce the cost of tutoring significantly compared to commercial tutoring establishments like Kumon and also spoke about how the home-based tutoring had helped them succeed at school. Two neighbors and a Concord resident spoke against amending the code due to concerns with impacts related to increased traffic and parking, and how such businesses would not be compatible with residential neighborhoods.

After considering the testimony, the Planning Commission recommended that the City Council maintain the current limits on students served by a home-based business. The

Planning Commission was concerned with the impact of large home-based tutoring businesses operating in high density, multi-family residential developments. The Commissioners also noted the fact that the City is limited in restricting State-licensed care facilities, such as senior residential care or day care facilities, from operating in neighborhoods and how the impact of large home tutoring businesses may further impact neighborhoods where care facilities exist. The Planning Commission also recommended looking at other cost-effective ways to provide tutoring services, such as tutoring a group at a student's home or coffee shop, or partnering with local schools and other institutions for tutoring space. One Planning Commissioner suggested that, if larger groups of students were allowed, that the City should consider imposing a 30 minute gap between the group sessions, to help alleviate the impact to the neighborhood. The Planning Commission did not support the draft changes shown in Attachment 1.

### **Analysis**

The Home-based Business Standards seek to eliminate or minimize the impact(s) of home-based businesses on neighbors by making them "invisible to the neighborhood." Staff views the current restrictions on customers and employees as critical to ensuring that home-based businesses have a low impact on residential neighborhoods, especially in regard to traffic and parking impacts. Staff has the following concerns with amending the Development Code to increase the number of students served by home-based businesses:

- 1) The impact of such business on condominiums, apartments, and similar higher density neighborhoods. Many condominium and apartment developments do not have surplus on-site parking during weekend and evening hours when home-based tutoring businesses are likely to operate. And the closer proximity between dwelling units combined with their smaller size may result in intensifying other impacts associated with these businesses, such as noise. Additionally, the parking and traffic impacts of large home-based tutoring businesses will be greater on single-family neighborhoods comprised of small lots (i.e., 6,000 square foot or less) compared to larger lot subdivisions. Subdivisions comprised of smaller lots have narrower lot widths where driveway curb cuts occur more frequently and reduce the amount of on-street parking. Small lot subdivisions are also typically served by narrower streets where parking may be prohibited on one or both sides.
  
- 2) The cumulative impact of allowing larger home-based tutoring or instruction in residential neighborhoods where other "non-residential" uses are already allowed by right under State law (e.g., residential care facilities for up to six residents, family day care homes for up to six children, and supportive and transitional housing). Information on most of these facilities is not available to staff. This makes it difficult to determine where these facilities already exist

and to require buffering or other standards that could minimize the concentration of large home-based tutoring businesses and State-licensed facilities.

- 3) Allowing multiple students to receive tutoring will make these businesses more noticeable and increase the likelihood that inquiries and/or complaints are registered with the City regarding such businesses. Code enforcement cases concerning violations of any standards or conditions applied to such businesses are to be expected.

Concord’s regulations on home-based business clients and customers are comparable to surrounding municipalities (see table below); however, some communities provide more general guidance rather than stipulated limits. Like Concord, Contra Costa County and Walnut Creek explicitly prohibit clients or customers from coming directly to the home, with exceptions for individual instruction or education-related services. Pleasant Hill prohibits home occupations from generating traffic or parking beyond what would typically be associated with a residential use.

**Table 1. Comparison of Surrounding Municipalities’ Regulations on Home-based Business/Home Occupation Clients and Customers**

Jurisdiction	Regulation
Contra Costa County	No clients or customers are permitted at the site of the home occupation, except for students engaged in individual home instruction. If student visits occur, only one student may be present at one time, no more than six student visits may occur per day, and students may be present only between eight a.m. and six p.m.
Martinez	The conduct of the home occupation shall not create excessive pedestrian, automobile or truck traffic in the vicinity or on the property of any other residence.
Pleasant Hill	Home occupation does not generate traffic in excess of that which is normally associated with residential use and requires no additional parking.
Walnut Creek	Home occupations shall not necessitate the rendering of services to customers or clients on the premises with the exception of educational services. Educational services are permitted so long as such activities do not generate pedestrian or vehicular traffic beyond that normal for the district in which it is located and does not create a neighborhood nuisance.

If the City Council supports changes to the home based business tutoring standards, staff recommends that the Council provide direction on desired modifications and direct staff to return with a draft amendment and ordinance for adoption. Attachment 1 incorporates draft changes as discussed, but not recommended, at the PD&IO Committee.

### **Financial Impact**

Amending the Development Code to allow home-based would have a negligible fiscal impact.

### **Environmental Determination**

The Development Code changes under consideration are minor in nature and will have no impact on the environment. In addition, future projects which may be affected by any of the proposed changes would be individually addressed under the California Environmental Quality Act. Pursuant to the provisions of the California Environmental Quality Act (CEQA) of 1970, as amended, the Development Code changes do not constitute a "project" within the meaning of Public Resources Code Section 21065, 14 Cal Code Reg. Section 15060(c)(2), 15060(c)(3), or 15378 because it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

### **Public Contact**

The agenda was posted. As a courtesy, the Planning Division also notified all owners and occupants of property within three-hundred (300) feet of the subject home-based business and existing businesses that provide similar tutoring or instructional services.

### **Attachments**

1. Draft Development Code Amendment as presented to Planning Commission
2. Comment letters/e-mail in support of code amendment
3. Comment letters/e-mail opposed to code amendment

**18.200.100 Home-based businesses.**

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Where allowed by Division II of this title (Zoning Districts – Uses and Standards), home-based businesses shall comply with the requirements of this section.

A. Applicability. This section applies to all home-based businesses which are allowed as an accessory use to the residential use of any property. This section applies wherever residential uses are allowed by Division II of this title.

B. General Requirements. All home-based businesses shall comply with the following:

1. Location. The home-based business shall be conducted entirely within the principal dwelling, within an enclosed structure attached to the dwelling, or within a legally permitted and constructed enclosed accessory structure detached from the dwelling, excluding required garage parking area.

2. Floor Area Maximum. The space exclusively devoted to home-based businesses, including any related storage, shall not exceed 20 percent of the dwelling unit's habitable square footage as determined by county tax records.

3. Employees. Employees working or meeting at the site shall be limited to persons who reside at the residence and one nonresident. The one nonresident employee's hours shall be between 8:00 a.m. and 8:00 p.m.

4. Clients or Customers. No clients or customers shall be permitted at the site of the home-based business, except for students engaged in individual home instruction; i.e., with one student at a time and no more than six students per day. Student hours shall be between 8:00 a.m. and 8:00 p.m. An exception for nonstudent clients **and limits on students** is allowed pursuant to subsection (D)(2) **and D(3)** of this section.

5. Vehicles. In order to retain and preserve the neighborhood character and residential appearance of the property, a maximum of one business vehicle up to one-ton capacity per residence shall be permitted; provided, that the vehicle does not give the appearance that a business is being conducted at the location. The following types of vehicles are expressly prohibited: limousines, dump trucks, tow trucks, pick-up trucks with the bed converted into a hauling compartment designed to hold materials and equipment that exceed the height of the

existing sides of the truck; construction vehicles (e.g., front-end loaders, backhoes); trailers (e.g., construction trailers, chipper trailers); construction equipment (e.g., cement mixers, chippers); vehicles over one ton; and similar vehicles.

6. Parking. A home-based business shall not encroach on any areas required for parking. A vehicle used in conjunction with a home-based business shall be parked in compliance with all applicable parking requirements for the residence.

7. Appearance. The residential appearance of the property at which the home-based business is conducted shall be maintained, and no exterior indication of a home-based business shall be permitted, including commercial advertising signs or window displays.

8. Storage. No equipment, parts, materials, supplies, merchandise, refuse, or debris shall be stored outdoors. Equipment, parts, materials, supplies, or merchandise may be stored within a permanent, fully enclosed compartment of a passenger vehicle or truck. No refuse or debris shall be stored in any vehicle. There shall be no storage of hazardous chemicals other than that which is normally found at a private residence.

9. Deliveries. Deliveries shall be limited to the frequency of deliveries and types of vehicles normally associated with residential neighborhoods and shall be between the hours of 8:00 a.m. and 8:00 p.m.

10. Nuisances. No home-based business shall be conducted in a manner which creates a public nuisance under state law or under the development code. Without limiting the foregoing, a home-based business shall not create noise, odor, dust, vibration, smoke, electrical disturbance, or any other interference with residential uses of adjacent property and shall be invisible to the neighborhood. There shall be no excessive use of, or unusual discharge into, any one or more of the following utilities: water, sanitary sewers, electrical, garbage, or storm drains.

11. Compliance with Other Requirements. A home-based business shall comply with all other applicable state laws and city ordinances, including any state licensing requirements.

C. Prohibited Home-Based Businesses. The following types of home-based businesses are expressly prohibited:

1. Automotive service, diagnosis, or repair to vehicles, other large machinery or equipment, or large appliances of others; and
2. Beauty salons and barber shops.

D. Permit Requirements.

1. Any person desiring to operate or establish a home-based business shall file an application and pay the fees for a home-based business permit ~~in accordance with Chapter 18.420 CDC (Administrative Permit)~~
2. Any person whose home-based business relies on nonstudent clientele visiting the residence may apply for a minor use permit in accordance with Chapter 18.435 CDC (Minor Use Permits and Use Permits), to allow up to six nonstudent clientele customers per day, with one client at a time.
3. **Any person whose home-based business relies on providing education-related tutoring or services may increase the number of students served by the following:**
  - a. **Up to four students served at a time, and not more than six total students per day, subject to a home-based business permit, between the hours of 8:00 a.m. to 8:00 p.m.**
  - b. **Up to four students served at a time, and not more than sixteen (16) students per day, between the hours of 8:00 a.m. to 9:00 p.m., subject to an administrative permit and notice to property owners and residents within 300 feet of the home-based business of the decision and right of appeal pursuant to Chapter 18.510 CDC (Appeals and Calls for Review).**

E. Appeals. If the ~~administrative permit home-based business permit~~ is denied or revoked, the home-based business applicant or permit holder may appeal the planning division's determination pursuant to Chapter 18.510 CDC (Appeals and Calls for Review). [Ord. 12-4. DC 2012 § 122-623].

I'm Anna Rikkelman and I am a 25 year resident of Concord. My family of four requests that the Planning Commission and Council amend the current code and in its place implement Alternative #2.

The theme of our City is 'where families come first' and NOT 'where status quo is the way to go.'

I attended the June 11 meeting of the City's Committee on Policy Development and Internal Operations. At the meeting, I was ecstatic to hear Mayor Birsan state that in Concord, his words, "we strive to improve and enhance".

For almost three years I served on the Naval Weapons Station's original Community Advisory Committee. We strived to set forth a re-use plan for a World Class development – a development that would put Concord on the map in a super positive fashion. **We did not strive for status quo.**

At the June 11 meeting, I was extremely disappointed to hear Ms. Obringer mention that changing the City's policy on in-home tutoring would just be too much work for the compliance folks to monitor. Her comments also included, in her words, "tutoring only benefits the affluent".

I am NOT affluent, and it surely has benefited my two children. Sometimes we parents just do what we need to do, give up what we need to give up, to make what we feel are the right choices for our families. Tutoring has nothing to do with affluent. It has everything to do with making choices.

The June 11 agenda item prior to the in-home tutoring agenda item was about code enforcement of the donation dumpsters. Monitoring donation dumpsters is approved, but changing the city's rules on in-home tutoring remained a 'tie' between the two council folks. What gives and where is the priority in our City?

Something just seems out of balance that as a City we strive for World Class, but our children's ability to strive to be better than the best by tapping into small in-home tutoring sessions as noted in Alternative #2 is being questioned.

Also I have followed the discussion of this agenda item in social media. It needs to be clarified that:

1. In-home tutoring is NOT setting up a school.
2. At the June 11 meeting, 14 people spoke in favor of the non-traffic impact to their neighborhood of Ms. Weer's small, in-home tutoring.
3. The complainer wasn't even present at the meeting nor sent a representative. There were no nay's addressing the committee.
4. Enhancing the educational level of the youth in our community can't be compared to any other type of home-based business.

I might also add for your consideration in making your decision tonight that the angry neighbor who has stirred the pot is a code enforcement contractor to the City of Concord. He is not just a neighbor.

Something just doesn't seem right about this.

Thank you for your time to listen to why I believe that Alternative #2 indeed reflects 'where families come first' and therefore should be the recommended alternative put forth to City Council.

## Abejo, Frank

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**From:** Susan Antolin <susantolin@gmail.com>  
**Sent:** Wednesday, August 01, 2018 11:49 AM  
**To:** Concord City Council  
**Subject:** Attn: Carlyn Obringer  
**Attachments:** 2018\_08\_01 Letter in Support of Amendment Alternative 2 to Concord City Code attn Carlyn Obringer.docx

Susan Antolin

email: [susantolin@gmail.com](mailto:susantolin@gmail.com)

August 1, 2018

Carlyn Obringer

Concord City Council

**Re: Support for proposed amendment to Concord City Code 18.200.100, Alternative 2**

Dear Ms. Obringer,

I am writing in support of proposed amendment, alternative 2 to the above referenced Concord City Code. Two of my daughters were tutored in math by Claire Weer at her home in on Crenna Avenue in Concord, and based on that personal experience, I support the proposed amendment for the following reasons:

1. The proposed amendment would support education and provide a valuable service for students in the community who want to do their best and aim for admission to competitive colleges. By attending tutoring sessions at Claire's home with other students at their same level, our daughters were able to complete AP Calculus in high school. One daughter attended Purdue University and the other is about to begin her college education at Scripps College. Claire's tutoring gave them an excellent foundation in math as well as the confidence to aim high in their educational goals. The level of math tutoring that Claire provides is not available, to my knowledge, anywhere else in the area.
2. The proposed amendment would support and encourage parents who choose to stay at home to care for their young children while also utilizing their education and skills in a home-based business. The options for parents, particularly women, who want to pursue careers and care for their children are limited. The cost of high quality childcare, combined with the well documented pay gap women face in the workforce, leaves women with difficult choices. It seems to me that the city should support and encourage parents to find creative solutions to enable them to pursue careers at home while also caring for their children and often elderly parents as well and providing the community with a service that enriches everyone involved.

3. The proposed amendment, by supporting and encouraging women to run tutoring businesses from home, would also benefit students in the community by providing valuable female role models. Not only did our daughters benefit from the tutoring sessions with Claire by attaining a higher mastery of math, they also, and perhaps even more importantly, got to know an extremely well-educated woman who displayed a passion for math and science that was contagious. That our younger daughter felt math was her favorite subject in high school and intends to major in neuroscience in college is a tribute to the positive role model she found in Claire. For that, I am profoundly grateful.

4. The proposed amendment takes into account the busy schedules of a typical high school student who often has athletic practice after school, making an 8:00 p.m. cutoff for tutoring impractical. Our daughters participated in high school water polo, swimming, cross country and track, which often necessitated tutoring after 8:00 p.m.

While I am a resident of Walnut Creek rather than Concord, I am a strong supporter of public education and of the Mount Diablo School District. I urge you to support the proposed amendment, which would benefit the wider community not limited to the city limits of Concord.

Sincerely,

Susan Antolin

**Abejo, Frank**

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**From:** joy whitcomb <joywhitcomb@sbcglobal.net>  
**Sent:** Tuesday, July 31, 2018 4:38 PM  
**To:** Concord City Council  
**Subject:** Laura Hoffmeister

Dear Councilman,

I am writing to you to ask you to vote yes to amend the Concord City Code 18.200.100 with Alternative 2 to allow " **Up to four students served at a time, and not more than sixteen (16) students per day, between the hours of 8:00 a.m. and 9:00 p.m., subject to an administrative permit and notice to property owners and residents within 300 feet of the home-based business of the decision and right of appeal pursuant to Chapter 18.510 CDC (Appeals and Calls for Review**".

A vote of yes on this amendment will allow education assistance to continue in our community. With the continued large class size, my children have found it difficult to meet with their teachers on a regular basis to get answers or more clarification on the curriculum. As a result, we have our children tutored in subjects they need additional assistance in understanding the subject material. Teachers are simply unable to provide additional assistance to all the students that need it. Many students have extra curricular activities or volunteer work, and was a result are only available for educational assistance in the evening.

We need our representatives to **STAND FOR EDUCATION** and support the Concord City Code 18.200.100 with Alternative 2. Thank you for your consideration in this matter.

Sincerely,

Brad & Joy Whitcomb

Hello Mr. Abejo,

Thank you for meeting with me yesterday. I appreciate your insight and the information you shared with me.

Attached you will find the proposal to amend 18.200.100(B)(4).

I value the city's input and suggestions. It is my intention to work towards a solution that benefits the City of Concord, instructional home-based business owners, and most importantly MDUSD students.

If there is anything that needs further clarification, or you have any questions, please don't hesitate to call me.

Respectfully,

Claire Weer

925-408-8124

## PROPOSAL:

The intention of this proposal is to amend code 18.200.100 in such a way as to continue to ensure that neighborhood character is preserved while at the same time increasing the ability of students to access the additional academic instruction they so desperately need.

Currently, section 18.200.100(B)(4) of the Concord Municipal Code states:

“Clients or Customers. No clients or customers shall be permitted at the site of the home-based business, except for students engaged in individual home instruction; i.e., with one student at a time and no more than 6 students per day. Student hours shall be between 8:00 a.m. and 8:00 p.m. An exception for nonstudent clients is allowed pursuant to subsection (D)(2) of this section.”

This code, as currently written, is restrictive and impractical. I would like to amend this section of code to read as follows:

### Option 1:

“Clients or Customers. No clients or customers shall be permitted at the site of the home-based business, except for students engaged in individual home instruction of college preparatory classes; i.e., ~~with one student at a time and no more than 6 students per day.~~ up to 6 students at a time. Student hours shall be between 8:00 a.m. and 8:00 p.m. An exception for nonstudent clients is allowed pursuant to subsection (D)(2) of this section.”

### Option 2:

“Clients or Customers. No clients or customers shall be permitted at the site of the home-based business, except for students engaged in individual home instruction of college preparatory classes; i.e., ~~with one student at a time and no more than 6 students per day.~~ up to 6 students at a time. Student hours shall be between ~~8:00~~ 89:00 a.m. and ~~8:00~~ 89:00 p.m.- An exception for nonstudent clients is allowed pursuant to subsection (D)(2) of this section.

## SUPPORTING INFORMATION/STUDENT SUPPORT:

Most students (especially high school students) do not finish a school day until 3:30 pm. After school, many students have extracurricular activities that frequently do not end until 6:30 or 7 pm. As I am sure you are aware, being admitted to college is getting more and more difficult. To be admitted to a UC school in the fall of 2017, high school seniors had to achieve an average of a 4.03 GPA on a 4.0 scale. Along with high grades and standardized test scores, a resume full of strong extracurricular activities is

also considered a necessity for students hoping to be admitted to top colleges. *The City of Concord needs to allow students every chance to succeed and provide them with as much support as possible to ensure they are college and career ready.*

I believe we can maintain the desirability and quality of life in our city, while also expanding the number of students who are able to receive help.

Currently, city code only allows one student at a time and no more than 6 a day. I am now seeing 40 students a week over about 12 hours. If the code remains as written with realistic student schedules, I would only be able to help 2 kids per day from 6-8 pm, so about 10 a week. I get phone calls almost every week asking for help with math and/or science classes (from Alg2/trig to AP calculus, AP STAT to AP chemistry). After the first few weeks of school, I have to say "no" and turn students away because there are no more evening hours available, and this is while seeing 4 students at a time in a small group. Saying "no" to a student begging for help with AP calc is not fun. How can we turn our backs on young people asking for help? There are not enough college preparatory tutors in the City of Concord to support all the students in need of tutoring services.

I am asking the city to remove/lessen the restrictive and/or impractical portions of the 18.200.100(B)(4) as shown above.

#### TRAFFIC:

In order to retain and preserve the neighborhood character and residential appearance of the property, the proposal does NOT include any amendments to 18.200.100(B)(5) – Vehicles. The proposal is not asking to increase the number of vehicles, or the allowable parking of clients or customers at a home-based business.

#### CITY IMPACT:

According to city officials, notification will be sent to approximately 20-30 businesses which may offer home instruction in the City of Concord (pop. ~122,000). This represents a density of less than one home-based instructional business per square mile in the City of Concord. Based on the above, it would seem a change in 18.200.100(B)(4) would have a minimal impact on the city.

I value the city's input and suggestions. It is my intention to work towards a solution that benefits the City of Concord, instructional home-based business owners, and most importantly MDUSD students.

Begin forwarded message:

**From:** Adriel Ewell <[adriellewell@gmail.com](mailto:adriellewell@gmail.com)>  
**Date:** August 1, 2018 at 5:57:50 PM GMT+2  
**To:** Lowell Brown <[lcb42@yahoo.com](mailto:lcb42@yahoo.com)>  
**Subject:** Meeting tonight

Dear City Council:

I am writing this email to voice my opinion one more time. First, I am hoping you have answers to my questions posed in June. If not, I respectfully ask when I can expect the answers to my questions as I think it is very important to address the issues I raised.

You already know my original concerns, so I don't feel I need to rehash all of that here. I'd like to summarize my dissent as follows.

Claire professes to be a tutor providing an essential service to the city of Concord. Claire is not the only home based tutoring company in Concord, but quite possibly she is the only one not following any of the home based business rules.

What Claire is teaching her students is that following the rules is not for everyone, that you can get away with blatantly disregarding the rules as long as you are a sweet white lady from the suburbs. Whether we like the rules or not, everyone must follow them. For instance, someone in our neighborhood just called to anonymously report that we are building a fort for our two boys in our backyard. It turns out we have some non-compliant issues to resolve. We had two days to respond and address the issues, with an immediate stop work order. However, for Claire, she has been openly ignoring all city rules for years with no punishment, no stop work order, only tips from city employees how to get around being caught. The city cannot pick and choose which codes to enforce, period.

Let me summarize what should be an open and shut case of "follow the rules or pay the fines/fees and close up shop". Our specific neighborhood does not need two daycare type businesses on the same street. We already have "good parents" driving way too fast on our small narrow streets. Our neighborhood should be able to rely on the city to enforce city code as it is written in all departments, for all residents. The city is favoring and shielding Claire from any sort of punishment which is unfair and disrespectful for those that live near her business, as well as other business owners who do follow the rules. The city of Concord at large does not want to open the floodgates for all tutoring companies to move their businesses home - it's pretty well established that we already have empty shops that need to be rented to small businesses like Claire's. The city should not even be considering this amendment to the code, however here we are, residents in a position to plead with the city to simply enforce the codes that do exist instead of discussing how to alter the codes that very few residents have issue with. We have spent a great amount of time and money discussing how to get around the existing city code, and no time at all making sure people are actually following the city codes we already have in place.

Please stand with the entire city of concord, those who elected you to the office you hold, instead of with one resident who has only her own best interest at heart.

Respectfully,

Adriel Ewell

Concord Planning Commission:

August 1, 2018

The Concord Planning Commission and City Council is now having to address an illegal business which has been in operation for more than 3 years now on Crenna Avenue.

If the Concord Police had enforced the ordinance and pursued compliance the citizens, staff and appointed members of our government would not have to endure the time, energy, expense and frustration of having to deal with this sticky problem of one blatantly arrogant individual who clearly believes they are above the laws governing the population of the City of Concord.

The fact that there is a need for supplemental education in Concord as a result of a poorly performing school system is not the issue here. The issue is operating a business with up to 300 vehicle trips in our neighborhood every month is unacceptable is clearly a CEQA violation and is not consistent with the Concord General Plan, or existing ordinances.

The issue is simple, enforce the existing law and require this individual to rent an office space in downtown Concord. Lord knows there are HUNDREDS available.

As per the staff report for tonight's meeting, the Planning personnel are not able to determine how many other traffic producing businesses on a given street, so making a universal decision to allow expansion of the type of business will undoubtedly result in additional complaints and potential litigation for the City to deal with. In our immediate area we have (1) large Family Day Care with 12 kids every day and a senior housing facility with at least 8 seniors which impact our traffic flow. In addition, there is the cut-through traffic from 242 onto Clayton and Concord Blvd. and working their way over to Hwy 4.

When I bought my property in Concord and as I pay my City Taxes, I am afforded a certain amount of legal rights under the Municipal Code. It is unfortunate that the City Police Department does not consider the Municipal Code an important document to enforce, they do not appear to be qualified to enforce the CMC.

My wife and I have a couple businesses. Initially my wife said we should operate the business from our home as it has a beautiful yard and would accommodate

her business very readily.., I informed her that; number (1)- I would not disrespect my neighbors to do such a thing and (2) I would not want to have problems with the City in meeting the Municipal Code.

My wife and I currently have (2) businesses and pay over \$10,000 in rent each month. The allowance of an individual to operate this business at the expense of the neighborhood is unacceptable. By her own admission she has more than 40 students per week and is grossing substantially more than we pay in rent, with virtually zero overhead, I am wondering if they pay any of the appropriate taxes due to the state of California and the Federal Government.

To operate a home based business, a City application Form is required. The form which has a series of questions on it requires each one of them to be initialed stating they will comply with them as a condition of continued operation. NONE of the conditions for which the applicant has signed agreeing to have been complied with. Please refer to my initial letter dated May 1, 2018 to the Concord City Council.

At this point no matter what limits you think might be reasonable, there is every indication that they will disregard **any and all** limits you place on them, as Code Enforcement couldn't seem to get the job done in (3) years, and they continue to operate an ADU for their parents without the appropriate permits since 2007.

My recommendation for modifications to the Ordinance are as follows:

1. Any Educational Tutoring Business is not allowed in a residential district(s) and shall comply with the Concord Municipal Code.

I believe the experience of having to deal with this for the last three years has been intolerable, and now the neighborhood is divided.., over this issue.

This is more than Crenna Ave, it is a City wide Municipal revision and it appears that evaluating every condition where the impact would be significant has not been studied or analyzed with any technical certainty. So without all of the facts a no decision must be rendered.

May 30, 2018

Honorable Mayor and City Council;

RE: CE# 180245 ILLEGAL TUTORING SCHOOL BUSINESS, 3733 Crenna Av.

Sunday evening, 5/13/18 there were 9 students at a time in the illegal Tutoring School located in our neighborhood; 3733 Crenna Av. at 7:50 p.m.

At the direction of the City of Concord Police Department Code Enforcement Division there were (7) vehicles parked on Concord Blvd atop the bike lane. Two of the vehicles had parents idling their engines while they waited the hour until the next set of students arrived, per the attached photo.

Now imagine 7 vehicles per hour - for 4 hours, cycling through your neighborhood 4 nights a week... and parking for (1) hour each until a new group motors through...

I am confident that once the smoke clears on this issue. (if not curtailed) these people will migrate back to parking in the neighborhood... in front of my home. This is because the operator of the business has told the students not to park in front of their home as they were getting too many oil spots on their asphalt. I personally confirmed this by asking one of the students a year or so back.

I was speaking with Frank Abejo about this issue on May 3rd, and he said there was to be a hearing on the 8th of May. I spoke to the affected neighbors and they were planning on attending the meeting to express their concerns about the traffic and other impacts to our neighborhood from this illegal business. I was informed on Monday, May 7th, that the meeting was rescheduled to the 13th of June. I have business out of town that week which cannot be changed, and requested the meeting be moved so that I might attend and express my concerns but my request was denied. Today, I learned the meeting was again moved from June 13, to June 11<sup>th</sup>. This is unfortunate, as it makes attendance for interested and concerned parties even more difficult to accommodate a moving target.

I was informed that the operator of the illegal business presented an impassioned speech at the City Council Meeting about how she is just trying to be a good steward, teaching a few AP students how to pass Calculus. Well, I am here to tell you - this is a thriving business. and the group of people clapping after her diatribe were parents of the students she had solicited to support her. If you have only had an opportunity to listen to the "poor me" speech, one would have thought that *I was the one..., BREAKING THE LAW !!!*

Many other neighbors have been expressing frustration at the lack of effort from the enforcement arm of the City to rid the impact to our neighborhood of this flock of roaches roaming our streets in the dark. I guarantee that they will be parking in the neighborhood again next year when the days are shorter and the winter rains set in.

I have attached a copy of my initial letter to the City Council and along side my signature are almost a dozen other neighbors whom are angry about the increased traffic and impacts this business has brought to our neighborhood.

So let's do the math: 7 vehicles per hour, 4 hours per night, 4 nights per week. That is 112 vehicle trips EACH week... 448 vehicle trips per month. 448 hours of teaching equates to \$22,400 income per month. Surely, she can afford to rent a space in the Central Business District where so many vacant buildings make our City appear to be a blighted backwater.

It is interesting that notices were to be sent out to other private tutors with home occupation permits, but no notice was given to businesses that comply with the laws, lease space and pay their fair share of taxes. This gives me some heartburn, but I have attached a list of all of the businesses for you so it will make noticing them easier for your staff as I am confident they will have an opinion on this matter as well.

So after three long years of asking the City to enforce compliance, to follow their own rules and stop this infringement to the members of our neighborhood who are not taking advantage for financial gain.... I respectfully request that the City do NOTHING, simply direct staff to perform their jobs in accordance with the existing Municipal Code and move on, Lord knows the City doesn't need to open "One more" can of worms, and deviate from any of the neighboring community Municipal Codes by allowing extended hours, more students and increased risk to the unaccompanied minors to wander the streets after dark. The laws are in place for valid reasons, let's see if it is possible to simply enforce them.

It is difficult to say no to the vocal constituency, but In the long run I am confident the real leaders of this community are capable of doing the correct thing, not just the expedient thing and stopping the BS in our neighborhood. After all, "Concord Is For Families!"..., not for businesses taking over our neighborhoods.

Thank you for doing the right thing for the future of Concord



Lowell Brown  
(925) 890-9979

May 1, 2018

Honorable Mayor and members of the Concord City Council,

It is my understanding there has been a request to allow for more students at a home-based business in my neighborhood.

Last week I received a voicemail from the Concord City Manager that a committee will be evaluating this request and will make a determination whether the request is reasonable.

I can honestly say that there has been a tremendous impact to the neighborhood from the non-conforming home based business located at 3733 Crenna Avenue.

Between the traffic, over 300 + (additional) vehicle trips through my neighborhood each month, students speeding through our neighborhood in their cars, the cigarette butts from the idling parents, the knocked over trash cans and surly comments from the operators of the business, and groups of unaccompanied minors walking the streets - this business has had a *huge impact* to the character of our neighborhood.

Initially, there was only one student on Sunday afternoons, and I did not have any problem with that level of impact to our neighborhood, but for the last 3 years there has been an exponential increase to the numbers of students and evenings when the business is operating beyond the time limits and numbers of students allowed, which are in direct violation of the Home-Based Business Permit limits.

Now there is a parade of cars at 5 p.m., 6 p.m., 7 p.m., 8 p.m. and 9 p.m., wherein up to 20 students have been observed cycling through the home on an hourly schedule to have math tutoring.

I have complained to the City Planners, and Code Enforcement (Police staff), who say it is not a *low priority*, but a "**NO PRIORITY**", and Planning staff comments such as; "They run a clean operation...", and "But they are AP students, we should give them a break....."

I surveyed the adjoining Cities and all do not allow as much activity as Concord's current Home Based Business does, even when the operators comply.

Walnut Creek, Pleasant Hill and Martinez Code Enforcement personnel said that they will only allow (with a Conditional Use Permit) one student at a time up to 5:00 p.m.

**Here is what your application allows:**

**Clients or Customers:** No clients or customers shall be permitted at the site of the home-based business, except for students engaged in individual home instruction, i.e., with one student at a time and no more than six (6) students per day. Students may report for instruction between the hours of 8:00 a.m. and 8:00 p.m. only. \_\_\_\_ (applicant's initials)

**The key here is "INDIVIDUAL HOME INSTRUCTION"... During their regular weeks they have at least 4 students at a time and during S.A.T. Prep. Times, I have seen up to 12 students at a time.**

**Parking:** A home-based business shall not encroach on any areas required for parking. A vehicle used in conjunction with a home-based business shall be parked in compliance with all applicable parking regulations, including but not limited to City of Concord 2012 Development Code, Section 18.160. \_\_\_\_ (applicant's initials)

Due to the ever increasing number of students cycling through the neighborhood, the students are now being asked to park around the neighborhood in a effort to conceal the number of cars. However, there are the younger students whose parents wait the hour for their kids to get done with "School", and use my driveway as a turnaround..., smoke and drop cigarette butts, drop litter and play loud music, all of which are disruptive to the peace and quiet of our neighborhood.

**Appearance:** The residential appearance of the property at which the home-based business is conducted shall be maintained, and no exterior indication of a home-based business shall be permitted, including commercial advertising signs or window displays. \_\_\_\_ (applicant's initials)

The operators of this business have blackened out the window of the front bedroom to prevent viewing of the white boards, long tables and student chairs set up for this School.

**Nuisances:** A home-based business shall be conducted in a manner which does not create a public nuisance under State law or under this Code. Further, a home-based business shall not create noise, odor, dust, vibration, smoke, electrical disturbance, or any other interference with residential uses of adjacent property, and shall be invisible to the neighborhood. There shall be no excessive use of, or unusual discharge into, any one or more of the following utilities: water, sanitary sewers, electrical, garbage, or storm drains. \_\_\_\_\_ (applicant's initials)

**This business is not invisible to the neighbors!!!!**

- A. The traffic trips are unacceptable, 300 + vehicle trips per month....
- B. The students have been instructed not to park in front of the operators' house, because they are tired of the unsightly oil drops on the asphalt, now they park in front of my home.
- C. The speeding cars are unacceptable.
- D. The litter and cigarette butts are unacceptable.
- E. The surly comments are an unfortunate result of Code Enforcement not addressing this sooner.

The intensification of the policy is not warranted or reasonable and will lead to more nonconforming School Operations.

I see article after article in the newspaper about how there is so many vacant lease spaces in the down town, and that something must be done. Well, here is one solution; **Enforce the existing Ordinances,** and Municipal Code and get this VERY successful business out of our neighborhood.

For 3 long years I have been begging the City staff to do something about this non-conforming business operating in our quiet neighborhood.

Please direct staff to do what it takes to enforce the existing ordinance for home based business of the City of Concord.

By signing below, applicant acknowledges that the home-based business will be incidental to the property's use as a residence, that it will comply with the criteria stated herein, and will not involve any of the prohibited activities listed above. **Any violation of these restrictions will result in possible fines, penalties or legal action.**

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

This is clearly a blatant disregard for the current Municipal Code, Please to not encourage more nonconformance by allowing additional students, the current level of (1) student at a time during the prescribed hours of operation, is a reasonable approach.

Please direct staff to do what it takes to enforce the existing ordinance for this home-based business of the City of Concord.

Sincerely,

*Lowell Brown*

Lowell Brown, (a 15 year resident)

(925) 890-9979

*Don White*  
(14 year resident)

*Just Hanky*  
28 yrs!

*AAA*  
OVER  
20 YEARS

*Paul Liberty*  
1807 ADAMS DR  
(7 years)

*David Buller*  
11 years

*For 9 yrs*  
5 yrs

*54 years*



**Comparative Analysis – Other local cities**

CITY	MUNICIPAL CODE SECTION	HOME OCCUPATION PROVISIONS REGARDING ON-SITE INSTRUCTION	Quantified Max.	Performance –based limitations
Antioch	9-5.901 (A)(14)	In-home “lesson” allowed for no more than 6 students max in any 24-hour period.	Y	Y
Benicia	17.70.070(C)(7)	Business shall not create pedestrian, automobile, or truck traffic significantly in excess of the normal amount in the district.	N	Y
Brentwood	17.840.009	Maximum one vehicle and two students are allowed at one time. Maximum 12 students/day.	Y	Y
Clayton	17.71.020, -.030	If CD Director approved, no client/student traffic allowed to the residence. If PC purview, maximum 6 students/day unless decreased by PC. On Saturdays, student traffic limited to 9AM-5PM. No Sunday traffic allowed.	Y	Y
Lafayette	6-347	No specific restrictions on instructional businesses. Business must not generate vehicular or pedestrian traffic/parking in excess of that normally associated with residential.	N	Y
Moraga	8-112-030	No specific restrictions on instructional businesses. Business must not generate vehicular or pedestrian traffic/parking in excess of that normally associated with residential.	N	Y
Oakley	9.1.1120(c)	In-home educational businesses allow max of 6 “people in total” ( <i>not clear if that means max at one time, or per day</i> ).	Y	Y
Orinda	17.3.7(B)	No specific restriction on interior instruction. Any home-based business must be incidental and subordinate to residential use.	N	Y
Pittsburg	18.50.405(C)	“Educational services” allowed, without creating neighborhood nuisance	N	Y
Richmond	15.04.810.012(5)	Individual instruction/tutoring allows max of one client at a time, no limit per day.	Y	Y
San Ramon	D4-33	No clients allowed at home, unless a Minor Use Permit is approved by Zoning Administrator	Y	Y
Vallejo	16.60.030(O)	No more than four clients at a time, with a maximum of 10 clients/day. Clients only permitted between 8AM – 9PM.	Y	Y



# Home-based Business Standards

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City Council Presentation  
August 28, 2018

Presenter:  
Frank M. Abejo  
Principal Planner

# Background

- Home-based Business Definition

“...an income-producing activity customarily conducted within a residence or residential accessory building, only by the inhabitants thereof, which use is **incidental to and does not change the character of the residential use of the property.**”

- Home-based Business Standard on Customers or Students

No clients or customers shall be permitted at the site of the home-based business, except for students engaged in individual home instruction; **i.e., with one student at a time and no more than six students per day. Student hours shall be between 8:00 a.m. and 8:00 p.m.** An exception for nonstudent clients is allowed pursuant to subsection (D)(2) of this section.

# Background

- Discussion of standard on students initiated by a code enforcement case concerning a home-based tutoring business at 3733 Crenna Avenue.
- Home-based business operator tutors approximately 40 high school students per week and requests amending the code to:
  - Eliminate restrictions on individual instruction and cap of six students per day.
  - Eliminate operating hours or extend them from 8:00 p.m. to 9:00 p.m.

# Background

- Policy Development & Internal Operations Committee (PDIO) considered this matter on June 11, 2018. PDIO Committee did not formally recommend a code amendment but agreed to forward the matter to the full City Council.
  - Amendment supported by Mayor Birsan to allow:
    - (1) Tutoring for up to four students at a time and not more than six total per day “by right.”
    - (2) Tutoring for up to four students at a time and not more than 16 students total per day and extending hours to 9:00 p.m. with an administrative permit and notification to neighbors.
- Planning Commission considered the matter on August 1, 2018 and recommended against amending the code.

# Recommendation

- Staff recommends keeping existing limits on the number of students served by home-based businesses due to the following concerns with large home-based tutoring businesses:
  - Impact of such businesses on higher density neighborhoods;
  - Cumulative impact of such businesses along with other “non-residential uses” allowed by State Law;
  - Increase in code enforcement cases.



# QUESTIONS?

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FINAL SLIDE