

# **Making Room for Home-Based Businesses: A Survey of 12 Zoning Ordinances**

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## Introduction

In an age of economic anxiety, the humble home-based business offers an unexpected source of economic development. One might be tempted to doubt the importance of home-based businesses and the restrictions zoning ordinances place on them. But consider the source of many of America's most dynamic companies today. A budding Hewlett-Packard garage operation at 367 Addison Avenue in Palo Alto may have been shuttered by restrictions on accessory structures.<sup>1</sup> A young Walt Disney Company team operating out of 4406 Kingswell Avenue in Los Angeles may have been reported by neighbors and closed down for off-site employees.<sup>2</sup> A seemingly insignificant Amazon at 10704 NE 28th Street in Bellevue might have been identified as a wholesaler and shut down.<sup>3</sup> The list could stretch on, but the message is straightforward: home-based businesses punch above their weight in innovation. For policymakers and planners interested in tapping into their potential, reforming the zoning ordinance offers a low-cost place to start.

Our aim in this paper is to explore how zoning ordinances regulate home-based businesses (HBBs). First, we map out the roots of contemporary HBB zoning regulation and recent criticism. Second, we examine available data on the economic importance of HBBs and outline how prevailing restrictions may unintentionally burden small businesses. Finally, we survey the zoning ordinances of 12 major U.S. cities and compare them to the literature on HBB regulatory reform. We conclude with a summary of essential takeaways for planners and policymakers.

## I. Home-Based Regulations: Past, Present, and Future

Prior to the Industrial Revolution, work and home were intimately intermingled.<sup>4</sup> For many Americans, work happened in the home, whether in a shop in front, a home office, or a workshop in a spare room. Yet as the nature of the economy changed, many independent farmers, tradesmen, and professionals transitioned to wage labor. Concurrently, due in part to the pollution of new industries as well as unique American cultural characteristics, many came to see commercial activity as inherently degrading. This confluence of forces produced the unique American ideal of home as a single-family house removed from the disarray of commerce. As scholar Sonia A. Hirt describes, this cultural shift in turn heavily shaped conventional Euclidian zoning.<sup>5</sup>

Implementing this modern ideal with the newly established zoning power, planners gradually mandated the strict separation of uses. Despite the apparent popularity of this

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<sup>1</sup> Dunlop, Michael. "10 World Famous Companies that Started in Garages." *Retire@21*. May 17, 2015. <http://www.retireat21.com/blog/10-companies-started-garages>.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> Jackson, Kenneth T. *Crabgrass Frontier: The Suburbanization of the United States*. New York: Oxford UP, 1987. Print.

<sup>5</sup> Hirt, Sonia A. *Zoned in the USA: The Origins and Implications of American Land-Use Regulation*. Ithaca: Cornell University Press, 2014.

program, many customary HBBs survived, including traditional professions and home crafts. To avoid conflict with prevailing norms, early planners allowed customary HBBs—then commonly referred to as “home occupations”—to continue operating as accessory uses in residential districts. In an early legal textbook, zoning pioneer Edward M. Bassett set out three criteria for permitted HBBs: they had to be customary, incidental to the residential use, and not a business.<sup>6</sup> Early ordinances typically listed occupations that accorded with this standard. This first-generation approach to HBBs produced regulations uniquely suited to their time—and perhaps none other.<sup>7</sup>

In 1953, researchers at the American Society of Planning Officials (ASPO) recognized growing problems with this first-generation system and the emergence of second-generation regulations.<sup>8</sup> Acknowledging the limitations of the customary standard, many cities transitioned to across-the-board restrictions and updated lists of permitted customary HBBs. Researchers identified common features, including permitted and prohibited occupations, different regulation by district, transitional zoning, nuisance regulations, and special permits, as well as restrictions on area, equipment, off-site employees, accessory structures, sales, and signs. This mixed standard has confused courts and the general public alike.<sup>9</sup> Why permit cobblers and exclude braiders under a performance standard? Why permit planning consultants and prohibit bakers under a customary standard? Noting the potential conflict between these standards, researchers encouraged planners to either preserve the customary standard or shift completely toward a performance standard.

The rise of the Internet led to renewed calls for reforms to HBB regulation. Despite encouragement by the ASPO, many contemporary ordinances maintain a mixed customary and performance system. In a 2000 report, zoning administrator Charles Wunder called on planners to ease the vagueness and restrictiveness of the current system, noting that many ordinances are poorly adapted for computer-based businesses and telecommuting.<sup>10</sup> Echoing these concerns, legal scholar Nicole Stelle Garnett has argued for ending the customary standard and easing across-the-board restrictions in zoning ordinances, calling instead for a new focus on addressing negative externalities.<sup>11</sup> Making a similar case in 2004, the Small Business Administration (SBA)

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<sup>6</sup> Bassett, Edward M., and Katherine B. McNamara. *Zoning: The Laws, Administration, and Court Decisions During the First Twenty Years*. New York: Russell Sage Foundation, 1940.

<sup>7</sup> Dated occupations (e.g., dressmaking) can be found in most ordinances. As an example, see: United States. Lexington-Fayette Urban County Government. Division of Planning. *Zoning Ordinance Lexington-Fayette Urban County, Kentucky*. 1-11. July 01, 2016.

<sup>8</sup> *Zoning Regulations of Home Occupations*. Planning Advisory Service. Vol. 54. Chicago, IL: ASPO, 1953.

<sup>9</sup> *Ibid.*

<sup>10</sup> Wunder, Charles. *Regulating Home-Based Businesses in the Twenty-First Century*. Planning Advisory Service Report. Washington, DC: American Planning Association, 2000.

<sup>11</sup> Garnett, Nicole Stelle. “On Castles and Commerce: Zoning Law and the Home-Based Business Dilemma.” *William & Mary Law Review* Vol. 42 (2001): pp. 1191, 2001.

called for a scaling back of prohibitions on off-site employees, signs, and overly broad nuisance restrictions, among other issues.<sup>12</sup>

## II. Home-Based Businesses and the Cost of Regulation

Small businesses created approximately 64% of all new jobs in the U.S. between 1993 and 2011.<sup>13</sup> As major sources of innovation, they develop more patents per employee than large businesses.<sup>14</sup> When looking exclusively at firms that operate primarily from within a home, 9.04 million firms fit this description in 2012. According to the SBA, HBBs represented 52% of all firms and provided 10% of the total receipts of the economy in 1992.<sup>15</sup> The number of HBBs in the economy has grown from 16.37 to 27.63 million between 1992 and 2012.<sup>16</sup>

Some residents start a home-business on the side to supplement pre-existing income, while others jump in full-time either in search of a new career or due to involuntary unemployment.<sup>17</sup> Most HBBs were service related in 2012, including construction and professional, scientific, and technical services (Figure 1). The average salary for all sectors was \$33,741 (Figure 2). Research has found that HBBs lead to economic multiplier effects for communities and provide significant alternative sources of income for residents.<sup>18</sup>

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<sup>12</sup> Beale, Henry B.R. *Home-Based Business and Government Regulation*. Washington, DC: U.S. SBA, 2004. 72-90.

<sup>13</sup> *Small Business GDP: Update 2002-2010*, SBA, 2012.

<sup>14</sup> *Ibid.*

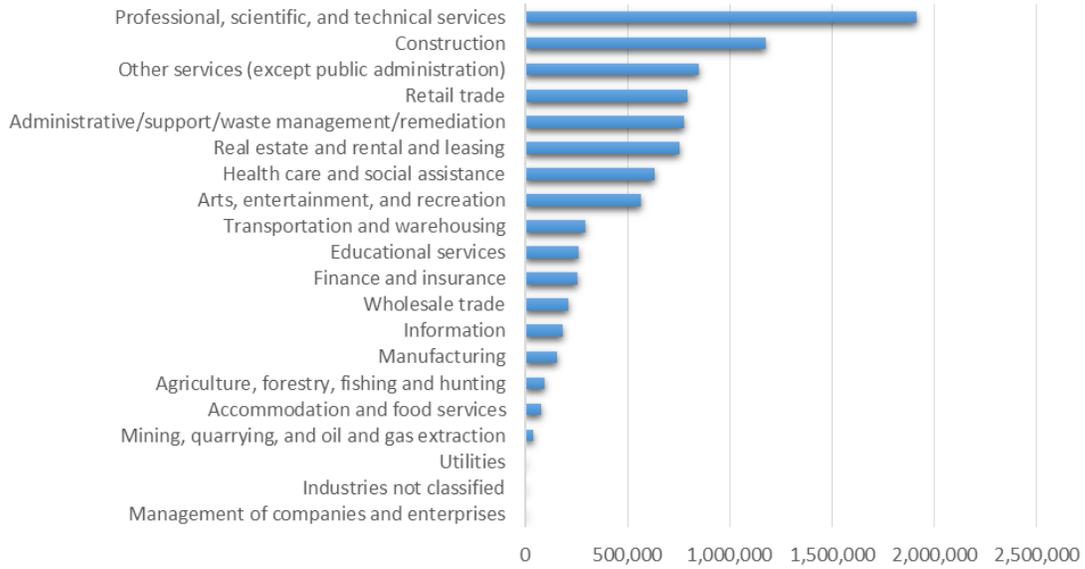
<sup>15</sup> Pratt, Joanne. *Myths and Realities of Working at Home: Characteristics of Home-based Business Owners and Telecommuters*. Washington, DC: U.S. SBA, 1993.

<sup>16</sup> Pratt, 1993; 2012 Census Survey of Business Owners.

<sup>17</sup> Cook, Diane. "Homework: Corporate Downsizing Makes Home-based Businesses the New Trend." *Delaware Business Review*, 1996.

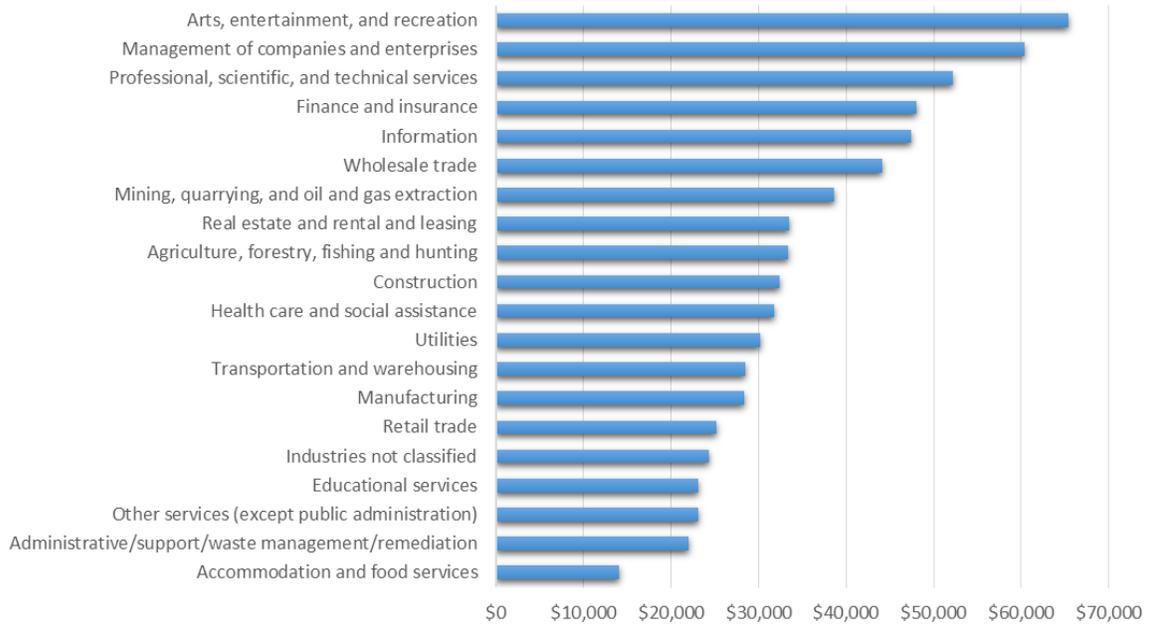
<sup>18</sup> Rowe, Barbara, George Haynes, and Marion Bentley. "The Contribution of Home-Based Business Income to Rural and Urban Economies." *Family Business Review*, 1999.

**Figure 1. Number of Firms Operating Primarily from within a home, by industry**



Source: 2012 Census Survey of Business Owners.

**Figure 2. Average Salary per HBB Employee, by industry**



Source: 2012 Census Survey of Business Owners.

Given their small size, zoning-related restrictions may disproportionately burden HBBs. SBA research has concluded that the costs of complying with regulations are consistently higher for small businesses compared to larger businesses that use similar compliance measures.<sup>19</sup> Studies reviewed by the SBA as well as much of the economic literature conclude that regulations can act as a significant barrier to entry for firms, drive companies underground, and inhibit growth of incumbent firms. According to Calcagno and Sobel, regulations impose high fixed costs that small firms are less equipped to handle.<sup>20</sup> These costs emerge from a range of activities; from filing paperwork and paying fees, to time spent interpreting rules and hiring legal assistance.

Numerous newspaper articles share stories of small business owners having trouble navigating the existing zoning regulatory landscape.<sup>21</sup> While some home business owners do the research and pay fees when possible, others are unaware of zoning requirements until they are asked by zoning officials to become compliant or cease operations. In areas with more stringent rules and inconsistent enforcement, owners frequently operate underground. One entrepreneur compared the existing system to the military's now-defunct "don't ask don't tell" policy.<sup>22</sup>

### III. Home-Based Businesses in 12 Zoning Ordinances

As discussed in Section I, many have called for reforms to the second-generation hybrid of customary standards and across-the-board restrictions. The following section explores whether ordinances have changed, following the methodology of Edward J. Jepson and Anna L. Haines' work on sustainability-oriented zoning reform.<sup>23</sup> First, we select a sample of twelve cities for this study. Second, we determine 11 criteria to characterize the HBB regulations of each city ordinance in the sample. Third, we assess each city ordinance against these criteria. Finally, we analyze the general findings of the research and suggest noteworthy trends and opportunities.

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<sup>19</sup> Beale, 2004.

<sup>20</sup> Calcagno, Sobel. "Regulatory Costs on Entrepreneurship and Establishment Size." *Small Business Economics* (2014) 42:541.

<sup>21</sup> Mackanic, Arlene. "Know the rules." *Black Enterprise*, 2004; McKnight, Marshall. "Home-based companies under siege." *NJBIZ*, 2003; Ingle, Eben. "Teachers are not criminals: the stokes zoning case." *American Music Teacher*, 2002; Vizard, Mary. "Home-business outlaws." *Home Office Computing*, 1993.

<sup>22</sup> McKnight, 2003.

<sup>23</sup> Jepson Jr., Edward J., and Anna L. Haines. "Zoning for Sustainability: A Review and Analysis of the Zoning Ordinances of 32 Cities in the United States" *Journal of the American Planning Association* 80:3 (2014): 239-252.

## Sample

Our sample contains 12 cities drawn from top 50 MSAs and are divided evenly among the four census regions.<sup>24</sup> Our sample includes Cleveland, Denver, Louisville, Charlotte, Las Vegas, Cincinnati, Hartford, Buffalo, Tampa, Boston, Milwaukee, and San Diego.

## Criteria

In surveying HBB regulations, we selected 11 elements to assess in the zoning ordinances sampled. Does the ordinance:

1. use the standard of customary, incidental, and not a business?
2. list permitted and prohibited ordinances?
3. restrict area?
4. restrict mechanical equipment?
5. prohibit off-site employees?
6. prohibit operating out of an accessory structure?
7. prohibit sales and retail?
8. prohibit signs and exterior modifications?
9. contain nuisance restrictions?
10. prohibit customer or client visits?
11. require a permit for HBBs?

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<sup>24</sup> "Metropolitan and Micropolitan." U.S. Census Bureau, Demographic Internet Staff.

# Results

Regulatory Criteria	Cleveland	Denver	Louisville	Charlotte	Las Vegas	Cincinnati	Hartford	Buffalo	Tampa	Boston	Milwaukee	San Diego
Customary language?	Yes	No	No	Yes	No	No	Yes	Yes	No	Yes	No	No
Incidental language?	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
Non-business language?	Yes	No	No	No	No	No	No	Yes	No	No	No	No
Expressly permitted occupations?	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Expressly prohibited occupations?	No	Yes	Yes	Yes	Yes	No	Yes	No	Yes	No	Yes	No
Area restrictions? Proportional or absolute?	No	Yes, 20% of gross floor area, never over 300 square feet	Yes, 25% of floor area or 500 square feet. For 1+ acre lots, 25% or 1,000 square feet	Yes, 25% of the floor area or 500 square feet	Yes, 25% of floor area, no more than 5% for storage	Yes, 25% or 500 square feet	Yes, 25% of floor area	No	Yes, 25% of floor area	Yes, 25% of floor area	Yes, 25% of floor area	Yes, no more than 1000 sqft of storage
Restrictions on mechanical equipment? Form?	Yes "customary home equipment"	Yes, none above 3 horsepower	No	Yes, only normal household equipment, excluding medical/dental/office and a trailer	Yes, only normal household equipment	No	No	Yes, "not customary to dwelling," varies by zone	Yes, "except such that is normally used for purely domestic or household purposes"	Yes, "ordinarily incident to a dwelling unit"	No	No
Off-site employees? Number?	None	None	Yes, one off-site or up to three in a five acre lot subject to conditional review	None	None	None	Yes, only one	Yes, depends on zone	None	None	None	Yes, one permitted
Accessory buildings prohibited?	No	No	No	Yes	No	No	No	Yes	Yes	Yes	Yes	No
On-site sale of goods/transactions prohibited?	Yes, on-site	No, but under limited conditions	No	No	Yes, exclude garage sales and cottage foods	Yes, no sales, limited services	No	Yes, excluding limited services	Yes, no on-site sales, services are fine	Yes, no trading/merchandise, some services	No	Yes, only goods manufactured on-site may be sold
Restrictions on exterior displays?	Signs only in high-density residential, no restrictions on the rest	No external alterations or storage with exceptions, sign may be 100 square inches and non-illuminated	No	No	No	No	One sign per DU, no illumination, no outside storage/displays, physical appearance must conform (vague, common)	Signs permitted, vary based on zone	Nameplate permitted, no outside use of land, no signs	No, excluding "professional announcement sign"	No, excluding no external alterations or signs	No signs, no outdoor storage
General nuisance regulations?	No	No	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes	Yes
Prohibition on customer/client visit?	No	No	No, no more than two	No	No (but no new traffic)	No (but no new traffic)	No, up to four	No	No (but no new traffic)	Yes, excluding some services	No, but no more than 8 in 24 hours and 2 at once (also, no new traffic)	No, one at a time (Neighborhood Use Permit required)
Permits required?	No	Yes	Yes	Yes	Yes	No	No	No	Yes	No	Yes	No, conditional

## Analysis

**Ordinance Language.** Many have criticized HBB regulations for their continuing use of the vague customary standard.<sup>25</sup> This language remains in many of the ordinances sampled. Five (42%) of the ordinances use the word “customary” in describing permitted HBBs. In contrast, the language of “not a business,” has almost completely disappeared. All but two cities (83%) require that HBBs be “incidental.”

**Permitted and Prohibited Occupations.** While eight (67%) ordinances list permitted occupations, only seven (58%) ordinances list prohibited occupations. Such lists have been criticized for their capacity to quickly fall out of date.<sup>26</sup> Our sample ordinances reflect this concern: many lists of permitted occupations include out-of-date home occupations, including millinery and clock repair. Many lists of prohibited occupations include automotive work, adult businesses, and manufacturing.

**Area Restrictions.** Area restrictions control how much space a home-based operator may use. It is often difficult to respect or enforce these restrictions. Nonetheless, nearly all (83%) of the ordinances sampled include area restrictions. These restrictions range from 20% of floor area and/or 300 square feet up to 25% and 1,000 square feet.

**Mechanical Equipment.** Many have criticized restrictions on mechanical equipment for their vagueness.<sup>27</sup> Of the ordinances surveyed, half prohibit mechanical equipment not customarily found in a home. Broad restrictions on mechanical equipment threaten the legal status of construction businesses, the second most common form of HBB (see Figure 1).

**Off-Site Employees.** Prohibitions on off-site employees are a powerful restraint on HBB growth.<sup>28</sup> In many cases, ordinances even restrict HBBs from employing off-site non-residents. Within our sample, 67% of ordinance prohibit off-site employees outright. Four (33%) ordinances permit one off-site employee.

**Accessory Structures.** Many ordinances restrict HBBs from operating in accessory structures. Critics have pointed out that these restrictions prohibit popular garage- and shed-based business.<sup>29</sup> Only 42% of the ordinances sampled contain such restrictions.

**Prohibition on Sales.** Following the rise of the online platforms like eBay and Amazon, home-based online retail businesses have grown in popularity.<sup>30</sup> Of the ordinance sampled, 67% prohibit sales and/or retail altogether. Only four (33%) ordinances contain language that may allow for a home-based online retail business, while only Las Vegas expressly mentions computers. Overly broad restrictions on sales and retail may

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<sup>25</sup> Garnett, 2001.

<sup>26</sup> ASPO, 1953.

<sup>27</sup> Wunder, 2000.

<sup>28</sup> SBA, 2004.

<sup>29</sup> Wunder, 2000.

<sup>30</sup> Pratt, 2012.

threaten the legal status of retail trade, a significant source of HBB income (see Figure 2).

**Signs and Exterior Modifications.** Many early HBB regulations prioritized preserving residential character. Reflecting this, 67% of ordinances sampled prohibit signs. Among the remaining 33% of ordinances, signs are permitted under certain conditions. Exterior modifications related to HBBs are nearly always prohibited.

**Nuisance Restrictions.** Among the ordinances sampled, 58% contain general nuisance restrictions related to noise, vibration, glare, odors, and dust among other externalities. While laudable in their aim, many of these perhaps go too far, restricting any new noise, odors, or dust.<sup>31</sup>

**Customers and Clients.** None of the ordinances sampled prohibit customer and/or client visits. However, 67% of ordinances place restrictions on the number of clients and/or customers that may be present at once. Las Vegas, Cincinnati, Milwaukee and Tampa broadly restrict any HBB that creates additional traffic.

**Permits.** The ordinances in this sample are equally divided on the question of permitting HBBs. In most ordinances, the permitting is handled by a zoning administrator. San Diego is alone among cities in allowing low-impact HBBs by-right and issuing permits for high-impact HBBs.

Comparing the ordinances in broad brushstrokes, we might compare Charlotte and San Diego. On one of the end spectrum, Charlotte reflects the second-generation regulatory hybrid. Charlotte's ordinance employs a customary standard as well as tight, across-the-board restrictions on area, mechanical equipment, off-site employees, and sales. On the other end of the spectrum, San Diego represents the closest ordinance among the sample toward a third-generation regulatory framework mapped out by critics: differential permitting based on impact, limited across-the-board restrictions, and the omission of a vague customary standard. While the ordinance is by no means perfect, it nonetheless offers a model for planners and policymakers interested in reform.

## IV. Conclusion

In communities across the country, the nature of work is changing. Work in manufacturing continues to shrink. The service industry is being transformed by the rise of automation and Internet-based retailers. Throughout the 2016 election season, candidates at all levels of government proposed ambitious plans for stimulating economic development. Yet largely left out of the discussion were the millions of women and men who have formulated their own small-scale economic development plan by starting a small business in their home. By understanding the challenges posed by current zoning restrictions and the potential opportunities for reform, planners are in a powerful position to cultivate an underrated positive trend in the 21st century U.S. economy.

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<sup>31</sup> Wunder, 2000.